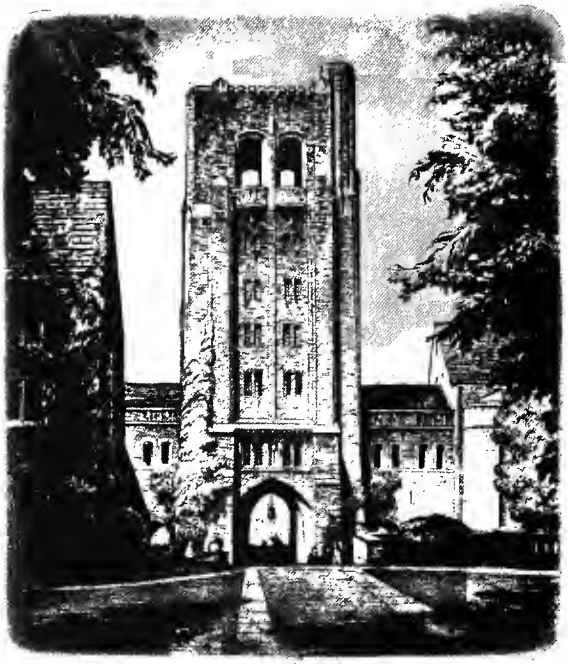

JAMES V. CAMPBELL.

The present Chief Justice of Michigan, whose portrait is given, was born in Buffalo, N. Y., February 25, 1823, and has resided in Detroit since 1826; is a graduate of St. Paul's College, Long Island, and early became a lawyer of distinction in a large firm in Detroit.

While quite a young man, in 1858, he was elected to the Supreme bench of Michigan and has served continually to the great satisfaction of the people of his adopted State. A man of the highest refinement and clearest intellect; a republican, but not a partisan, well read and of excellent temper, he is an ideal character whose fine presence and affable manners, coupled with a blameless and useful life, has endeared him to the bench and bar and all who have the honor of his acquaintance.

Elected to a chair in the law school of Ann Arbor University in 1859 he has also served the State ever since in that capacity as well as upon the highest Judicial bench. In the law school is seen his fluency and mastery of correct and forcible English and that rare gift of saying the right thing in pleasant sounding and persuasive sentences on all occasions. He is the idol of timid young lawyers who are ever encouraged by his words of wisdom and inspiration. The whole bearing of the man at home, on the street or as presiding Chief Justice is one of quiet dignity and independence. In features and manner he brings us in the presence of that ancient race of statesmen who surrounded the long table at Independence Hall and signed the declaration that all men are created equal.

TACT IN COURT

CONTAINING

SKETCHES OF CASES WON BY SKILL, WIT, ART, TACT, COURAGE AND ELOQUENCE,

WITH

PRACTICAL ILLUSTRATIONS IN LETTERS OF LAWYERS GIVING THEIR BEST RULES FOR WINNING CASES.

THIRD REVISED EDITION.

By J. W. DONOVAN,

AUTHOR OF

"*Modern Jury Trials*," "*Trial Practice and Trial Lawyers.*"

ROCHESTER, N. Y.:
WILLIAMSON & HIGBIE, LAW BOOKSELLERS AND PUBLISHERS,
1886.

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INDEX TO PORTRAITS.

PREFACE.

ADDISON says: The safest way to give advice is in the form of fables, and cites the case of Nathan to David as his authority. In this he shows that where instruction comes through story, incident or illustration, it is better understood and more convincing. The writer aims to follow this line of advice where it is given. The advice given is mainly from others.

In "Modern Jury Trials," the first series of this kind of law books, issued in 1881, is given some forty condensed trials, with ninety pages of descriptive matter, forming a book of 700 pages. The size required a price beyond the reach of many, and yet it has sold by thousands, even going into Europe, and reaching the Third Revised Edition. The demand for it came from the older class of advocates, who preferred to read the great trials of the past and present in extended form.

"Trial Practice and Trial Lawyers" followed in 1883, and met with equal success in this country. It was confined mainly to a description of American advocates, Preparing Cases for Trial, and the Conduct of Court Cases. Being about half the size of Modern Jury it was still found beyond the reach of very many young lawyers. The bar demanded brevity.

Judging by the numerous letters received from advocates of national fame, like Matthews, Beach, Graham, Curtis, Dexter, Gordon, Davis and their class, relating to these volumes and a lack of similar mention by young men, it appears that something even more condensed and less expensive is still needed for the great mass of young lawyers, to meet which, this smaller volume is issued.

Some of the articles and rules have already been quoted in several law journals and "Modern Jury," but are deemed worth repeating in this form by consent of publishers. Most of the Trial Rules are new and have been gathered by personal visits to, and by letter from able lawyers in nearly every city of the Union. This part of the book is especially instructive, as it contains the experience of hundreds.

The success of both previous volumes is due to the variety of talent that they naturally comprise in including so much of the art and skill of able advocates at their best, inspired by great events. Many of them have passed away, and the writer can speak wtth more freedom of their genius and greatness. From the greatest has come the warmest welcome and encouragement. Especially cheering were the generous words of the lamented Beach, who said in 1882, "How eagerly I would have read such books when I started in practice."

J. W. D.

DETROIT, January, 1885.

NOTE.—After a quick sale of two very large editions the demand is far greater than ever, and is supplied at the request of large dealers whose liberal orders cannot be filled without this Third Revised and Enlarged Edition.

August, 1886.

J. W. D.

TACT IN COURT.

TO BE A LAWYER.

THE luxury of pleasing others, enjoyed alike by actors, singers and lecturers, is shared by lawyers. They show it in looks, express it in words, and tell it in tones of speech that thrill and captivate hearers, and inspire the young with an early desire to be like such leaders. With this longing after greatness few believe in the hindrance to success, and most young men allow a free fancy to picture the future in gilded coloring. As thought crosses leauges and spans oceans in space, as soon and as easily as across the street, so the ambition leaps from youth to greatness, without the steps that lead upward on the rounds of fame's steep ladder.

Very few people consider the step by step process required in reaching success in law practice. It will not come by accident. It may not come by years of earnest labor. It will more likely come by tact and art, honesty and eloquence. Actors reach their distinction by finding their forte and follow it artfully, but they have a stage and play to enforce attention. Lawyers must wait like doctors for a first

case, and may be, for a first half hundred. To get in the procession is a great advance for a young lawyer. Once in the line, the rest depends upon mettle, gift, accident or industry.

To be a lawyer requires the skill of a stairbuilder, the art of an engineer, the eye of an artist, the voice of an actor, and the genius of an experienced machinist; it is more; it is to be all these in one.

The machinist has no more intricate work than the master of a great trial. The engineer needs no more care nor the artist more shading to bring out characters in the light of nature, nor does the actor need more power to compel conviction than every good lawyer should command.

In the light of this combination of quality is it a marvel that men succeed only seldom in the legal profession? Is it not rather a high and noble calling that demands such diversity of talents and such tireless energy in fitting the mind and body for so great a part in life's business?

The lawyer of all men should know much of life, and much of human nature. He should be a novice in nothing, and wide-minded in all things. Not a genius in everything but ripe in broad knowledge and general experience. When he is this, if he fails, it will be no fault of his own, and like Clay said of the presidency that he had "rather be right than president," one had better be fitted for a lawyer, and never have the golden fame he desires, than have ever so many trials and do his duty indifferently.

If I should give one rule of fitness it would be that innate feeling that you are born for the law,

and if after reading the record of other men's struggles and triumphs you still feel undaunted and courageous, and possess a voice and body, and constitution for such a life of study and perplexity, then adhere to your convictions like the old martyrs did to their religion, giving their whole life to the contest,

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LAWYERS.

LAWYERS, the most trusted and distrusted; the men who make contracts and unmake them; who give advise and sell counsel; who make money out of trouble and make trouble out of money; who create estates and distribute them—legally; who live by loaning money, and often subsist on borrowed capital; who hear and conceal marriage secrets, and drag out faded letters in bitter divorces; who please and persuade when they are lucky, but often go out of court branded and dispraised by the side defeated —and with one side always the loser—what wonder that the slurs of character fall to the common lot of the lawyer!

Without the smiles of the merchant's customer, he meets the frowns of business men in trouble. No time is to be lost, no delay for fees. He must win a victory or bear the blame forever. Unlike the builder, who knows that be it ever so perfect, the elaborate house he has finished can never suit the proprietor; unlike the machinist he controls not his own enginery; carrying the double burden of care

for self and client, invited to win what others have failed in; urged to mend the broken pieces of an ill-made contract; bound to account for unreasonable confessions, blunders and letters; asked to replevin goods already secreted, to attach the effects of a malicious merchant, to unearth fraudulent elections. to reclaim vast estates from costly tax titles, to keep one for years in plenty by restored possession and broken wills, often on doubtful evidence by a lawyer's art and eloquence—what a happy condition!

Fated from the start by uncertainty, where clients exact no less than absolute victory, they long to call reasonable what they know is only probable. By logic and argument on the theory of their client, with the facts only partially stated, and that part deeply shaded, they are often surprised by the other side and called to explain away their defeat in the end by a tirade on the perjury of witnesses and the depravity of human nature.

The happy lawyers! The men who live so easily, flourish so long on the bounty of a grateful people, make the laws and settle the titles, defend the weak and protect the wealthy, enjoy the rich fruit of the world's praises and abuses, mingled and commingled in such rare harmony that none can define where censure ends and approval commences! Who would not be a lawyer?

BEACH'S START IN LAW.

THE death of Wm. A. Beach, "the noblest Roman of them all," in advocacy, for the last decade, recalls his start in law practice.

His father was a well-to-do tradesman in Saratoga, New York, and gave William a good education in the academy near home, and his admission to the bar was considerable later; for the old gentleman had peculiar notions of how "Gus"—that was his boy name—should pursue his studies

After spending something over a thousand dollars on the young man's education, he questioned him of his future plans and prospects—of what he wanted to do for a living. The young graduate had not the faintest notion of law at that age, and replied that he did not know. "I want you to be a lawyer," said the father, decidedly. The young man hung his head, and replied: "How can I get a library?"

He was an early lover of books and fishing, and kept up both for a lifetime. "I'll hire you," said the father, "if you'll work faithfully and obey orders for the first year or so, and you will have a stated salary and enough to buy books, when the time comes." "I'll do it," said William; and accordingly he was furnished a Bible, a copy of Shakespeare, and Bunyan's Pilgrim's Progress, and sent to live with a farmer uncle in the mountains, some twenty miles away. It was some days and weeks before he became interested in the Bible (each book was to be read three times thoroughly and notes made of it), but the young man became interested, fascinated and charmed by each volume. He mastered

them, and received with this victory a splendid vocabulary.

He was still diffident, and when he commenced practice, he was timid and ungraceful. Still *he had ideas* in his language, quaint illustration, strong sentences, little words and clearness of putting things. The boys would say: "Let's go down and hear *Gus Beach* plead a case," and would go out of curiosity; but they would turn away, charmed by the little things he had said; and later they would change the saying to, "Let's go and hear YOUNG BEACH speak." And so, by degrees, he grew to be a fine reasoner, an attractive speaker, and late in life had a charm about all his speeches that was almost irresistible. Socially, he was genial and affectionate. About five feet ten, and one hundred and sixty pounds weight, with a face and voice and manner not unlike Beecher's, an erect carriage, acquired in the military academy. I saw him personally in 1882, and liked him at sight. I heard him at his best in '73, when he could thrill me as no man before had ever done. Everything about his tone, manner, words and expression, said: "Come nearer; throw off all surface dignity. *I am a man*, as well as an advocate."

POWER OF ILLUSTRATION.

ILLUSTRATION is using one familiar fact to show another newer fact in question. The familiar one is presumed to be beyond question.

The ancients were ever alert to enforce a point by illustration. A father, to show his son the evil effect of excessive drink, would have an intoxicated slave brought in, and ridiculed, in the presence of his children. Fables and short sayings, facts drawn from example, were favorite means of making strong reasons impressive.

It is perhaps the more usual method of argument employed by the great mass of people, and hence the more taking before juries and audiences, and for this reason matters are still reasoned out by comparison. There is a certainty of conviction to all such arguments. They come like the sound of a triangle in a band, They please many senses at once. They capture the ear, interest the mind, and hold the attention, while all along the judgment is active to detect the slightest lack of analogy.

He who reasons by story or incident, must reason accurately or he plans certain defeat. It will only be effective if made lucid and applicable, never when abstruse and uncertain. A rare fable, a short pithy story, or a forcible bible quotation will take with a crowd, or jury, and create sentiment.

Daniel S. Dickerson and Chauncey Shaffer, both in their days able New York lawyers—the last still in active practice, the first long gone to his last

reward—were each great rivals in the use of apt scripture. Mr. Shaffer had the faculty left in a rare degree of aptly using terse comparisons—evidently, he would say, this is like the old fable of the lion and the fox, where the fox is shown in the picture to be leading the lion, and a stranger remarks: Surely that picture was made by a friend of the fox! Had the lion's friend made it, it would show the lion as leading! So he applied the fable to the shading of the testimony by interested witnesses.

But of all men who convinced others by story, none exceeded the lamented Lincoln, who was complete master of the science.

Born in humble life, and gaining his wisdom largely by experience, he relied on the homely expressions of daily intercourse with the people. He was an adept in frankness of expressions. His stories used in reasoning seemed so plain that they were heard as in italics. They were perfect climaxes of logic.

There is one other reason why illustrations convince men. They take every one off guard; they come to the senses like a song; and songs are often convincing. They are delivered in a pleasing natural tone, and that is convincing. No one tells a story in any but a conversational key, and if that tone once catches the ear at all it is attractive. Senator Morton employed this method and could hold a ten thousand audience two hours and over; speaking in a low tone while sitting in a wheel chair.

I think that it is safe to conclude with Governor

Wisner's reason in an arson case, in showing why the straw-stack was not burned by combustion in midwinter, he said: "It may be, gentlemen; I believe in the Almighty's power to do it, but I never knew of his walking twice around a straw-stack to find a dry place to fire it, with double-nailed boots on, so *exactly* fitting the ones worn by this defendant."

TACT IN TRIALS.

An Advocate of eminence who was long noted for his many trial victories in criminal and fraud cases, very lately gave me two rules of practice that he considered important to remember. For clearness before a jury and courtesy to a court they are models worth saving.

"I have observed," he began, "that lawyers, almost invariably talk over the jury and reason, like Senators and Congressmen, with big long sentences, while juries reason like women with one or two simple examples like this: 'If one man failed to meet his note when due and cheated some one, they knew another of the same class of business would certainly be likely to be just as dishonest.'

"I found farmers had one language, carpenters had another, country merchants had another, and laborers another—these are the average jurymen. I adopted and used their catch words and phrases, not as a 'clap trap,' or a 'trick,' but 'to talk in

their own language.' I found it took better; they understood me and knew my meaning better. I never lost my suit by a jury's ignorance of what I contended for.

"Another rule was this: Juries respect with unbounded confidence the leanings of a judge. There is a reverence, that is often too exalted, but it is real. This was my experience and I fell in with it. I found it useless to argue after a ruling. I fell in with the views of the court all I could. I will give this instance:

"At a trial of importance before Judge L., just before adjournment one evening, he said: 'I may as well announce to counsel that I will rule so and so, as to the law of this case.' This was fatal to my position, but I bowed to the court pleasantly and said: 'That relieves us of dwelling upon that part, Your Honor,' and we went home.

"Opposing counsel argued very tamely on his facts, and relied upon his victory in the ruling, and I followed. Prefacing with the remark that our duty was much lessened, and I felt pleased at it, and at the candor with which the learned judge had shortened the controversy, to which ruling I made no objection. But the leading issue —I urged—the great vital, pivotal point, and the merit of the issue, the court must leave to the solid sense of the twelve men before me—men not so learned in the law, but far broader and more experienced in affairs and dealings of man with man, than either lawyers or courts could ever be expected to become, for a jury of lawyers could never agree. The courts of the several States

were often in conflict, but common sense and the jury were one! In this manner I separated the jury's duty from that of the court and won a splendid verdict, *over an adverse charge*, by *not appearing to be hurt by it;* a verdict that was quickly followed by a just settlement."

If these instances are not clear and instructive I will not render them less so by any attempt at pointing out their moral.

TOO MANY COUNSEL.

WILLIAM H. SEWARD believed in the power of one counsel over many. He relied more on his own resources than any American advocate. "If you employ counsel, they will match you," was his advice to clients.

It is a common boast of many litigants that they have employed "General Bradley," "Col. Carlisle," or some high-sounding titled orator, as if that alone were a fore-ordained victory. Trusting to this method is like leaning on a broken reed. Great counsel may give wisdom and dignity to a defense or prosecution, but they do not *create evidence.* Besides, if they are numerous, neither one will burn the oil in looking up law, or search the town for evidence to sustain a theory. Indeed there will be often a lack of harmony in theories with too many counsel.

Divided responsibility is one way to unsettle the true way of winning a verdict. The Union

army never won so many victories as it did after Lincoln passed the sole command under Grant, and told him to go ahead and put down the Rebellion. I remember a recent instance where on one theory certain victory must have followed. It was a plan of the attorney of record. He had dreamed it out and mastered its details. But the senior counsel distrusted its efficiency, took a different course, failed to do with the law what his associate had planned to accomplish with evidence, and lost. "That judge has ruled squarely against the law," said the senior. But this was no great encouragement. The junior knew the judge was over-prejudiced. To match this he had prepared a flank movement, which was abandoned in deference to *wiser* counsel.

The responsibility of a direct plan, and evidence to match—an early theory consistent with reason and common sense—should belong to a limited number, if more than one. The counsel that first surveys the ground, converses with witnesses, takes in the early situation, should control the trial. Absolute certainty in evidence is the best means of success. The law portion need never be ignored, but the case will turn on other than law questions fifteen times out of twenty.

A COMMON SENSE RULE.

COMMON sense is a taking quality in reason and argument. There is no better definition to trial logic than the truth so clearly told as to convince hearers. If it is over-told, argued too much, it may show anxiety, while a clear statement is taking and attractive.

Many witnesses testify under a strained belief that they must make a strong showing, and counsel take the same course by over-argument. If thirty men should swear they saw a man leap over a tall building, and only one should deny it, by showing how he jumped from an upper window, the one would win over the thirty.

We may as well take it for granted that court and jury have common sense, and believe that facts must have a foundation. The very moment one reasons from a longing to say something, he is losing, and truth from a witness will be of double force, if told without shading.

The first step in reasoning is to secure attention. This is to be done by calling to mind some few points on which no one can possibly question your position. Garfield captured a convention by telling of a storm at sea.

Having this good-will of the jury, you are in the same position as one who has paid several notes in bank at maturity; it creates confidence, and, more than that, if tersely told, it raises expectations and meets them. It is like telling a good story, the next story will be heard with new interest.

Stories are good to use as second kindling wood, but dangerous to start with. The jury will not be ready to laugh or cry too early in the contest; save them for the supreme moment. Let the best argument come in unaware. You need not ring a bell or blow a horn to announce it; let it reach the better judgment of the jury at the right moment, when feelings are warm and receptive.

Appeals to sympathy are used effectively when they come by surprise, and grow, as it were, out of the characters in the controversy—anything that happened in the hearing of the jury, if apt, is excellent. There are topics that carry a jury and court in a climax of victory, by their simple recital; the jury will take credit for discovery. It may be the very argument they would make, and they will be proud of its application.

It is not often that a jury can be reached from the front in battle, and a flank movement may be better. A Western counsel made an appeal for the release of a young boy, charged with arson—a terrible offense, not clearly proven—by this side illustration: "To a boy like this, life is little thought of, and punishment is hardly realized. He sits here as cold as marble. Brought in unironed and on bail, surrounded by some friends who love him, he has not yet learned to realize the consequences of an adverse verdict. The chief anxiety is to the older members of his family. To them his conviction would be worse than the grave. When the little Farrington boy was crushed to death the other day between two huge trucks, and Dr. Eddy folded his broken body in his fatherly arms and

carried it home, the scene was one long to be remembered. But the parting of a mother with a convict son—to know that he is to linger in his youth ten or a dozen years in anguish—is a far deeper sorrow. Sooner or later all home relations will be severed. Death, with noiseless footfall, comes in, 'seals up the doors of breath, puts out the light of the eye, freezes the purple current of the veins, and we lay them to rest for ever, and go away in sadness, for a time,' but even *death is not* dishonor! It is not like consigning one to a living tomb—not so dreadful, not so terrible in its consequences—and *of all things to a jury, the first and middle and last consideration is* the CONSEQUENCES OF THEIR VERDICT."

THE JURY.

A GOOD jury, a good theory, and a sensible conduct in trials is a golden court rule.

In addressing any large body of men, only a few faces will attract the speaker's attention, and these will be generally the middle-aged or the younger classes. Their keen eyes and expressive faces will show an early interest in every apt illustration or happy turn in the argument. They see a point readily and comprehend its meaning. If they have not been bored by tedious discourses, or soured by disappointments themselves, they are ready to reason with the speaker and come to his conclusion when sensible.

But suppose they are withered up, crusty, conceited, or biased men, like ex-officers, who have been led to believe in the total depravity of mankind, generally, and men engaged in lawsuits in particular, then you are on the losing side before your case is even started. What could have been gained by strict attention is lost in prejudice. What should have come to your rescue in the form of candid willingness to listen is transformed into a lot of blocks and stones to hear your urgent appeals for justice or convincing logic on questions of evidence.

The young men who hear readily and appreciate the fact that generous natures may be misled, and even err unintentionally, should not be set aside for colder natures who harden their hearts habitually and are destitute of all charity. Reasoning men well know that seventy-six per cent. of real criminals are born into crime, and only twenty-four per cent. are accidental and occasional law-breakers. Accident, anger, insult, or bad company may lead to arrest when the defendant is either innocent, or never likely to become a criminal. And as Governor Seymour once well said: "They may be the stronger for it, than some who have never been tempted." This reasoning will only apply to fair-minded, warm-blooded, noble-hearted men. So that the audience—or jury—is of vital consequences in all cases.

To have an intelligent theory, and one founded on reasonable circumstances, is next in importance to a well selected jury. It is too late after the

witnesses are sworn and the jury if selected to form theories to match them; theories should be matured and managed like the artful turn in the great Barnard burning case, where a dying declaration of how a murder was committed, became utterly worthless when the defense proved the one making it was in the habit of waking suddenly from vivid dreams, and relating most minutely every fact and circumstance of the dream like a living reality.

To conceal these theories from the enemy, and impress witnesses to do likewise, is excellent generalship. This is never accomplished without the greatest caution. It is the natural bent of clients to boast of expected victories, and by it they only double their enemy's energy. Could they but surrender cases candidly to their counsel, as a patient places his life in the hands of his physician, many a case lost would be easily won, while the management would be freer from errors and blunders.

The anxious suitor is a thorn in the side of his counsel, and like the spur of the race-rider makes a break in places where evenness is of all things desirable. "Ask him this question." "Ask him that question." And to each a bad answer comes back, and the case grows worse by the left-handed manner of interference. The client is actuated by anger and forgets that when a witness starts to tell a falsehood he will increase its clearness at every round.

There is little to be gained, and much to be lost, by meddling. About all that can be gained before-

hand is the full strength, and not the weakness of the enemy; while clients constantly underrate their opponent's evidence, they would be wiser to magnify it and be ready to explain or answer it with consistent honesty. Instead of placing stress upon character evidence, which of all things is dangerous—unless the character is beyond question, and the quality of witnesses to sustain it is equally reliable—one had better make the case without it, for any juryman will naturally reason that a doubtful associate would alone create a suspicion on a good character, while virtue need not boast too much of virtue.

The character of witnesses may often destroy the case they are sworn to sustain. I remember a breach of promise case where all went on swimmingly for the defense until a vile creature, called a man, swore to such a preposterous story of the plaintiff's acts with himself that not even a cross-examination was offered to deny it. It was considered its own denial, as it stood so revolting to reason that the common sense of the jury rejected it and gave the plaintiff $10,000 damages.

If any one believes that a foolish jury, or a stubborn jury, or a biased jury, or any but a fair-minded and intelligent, warm-hearted jury is the right one to try a civil or criminal case before, he lacks experience. If he believes in deceitful practices he is unworthy the name of *lawyer*.

Geo. M. Curtis

GEO. M. CURTIS.

GEO. M. CURTIS, whose portrait speaks for itself, one of the brightest advocates of the American bar, was born in Massachusetts in April, 1843. He served in the Union army in the late war; studied law with Hon. W. Ashmead, was admitted on reaching his majority, and elected to the State Legislature, where he took a high rank. He was later Assistant Corporation Attorney of New York, and still later served six years as Judge of the Marine Court.

In practice few men of his age have been so prominent in important cases. He has appeared in fifteen murder cases in which none of the accused were hung, and all but four absolutely cleared. He defended Hembold on charge of insanity and cleared him, appeared in Frank Leslie's will case, and in the famous Buford-Elliot Kentucky case. In the Bouden will case he established the doctrine that a man in the last stages of Bright's disease was incompetent to make a will. His recent signal victory was of Neville vs. Hitchcock, of the Fifth Avenue Hotel, where for a week he was opposed by Joseph H. Choate, a brilliant descendant of the great Boston lawyer, in which contest Judge Curtis was triumphant. He is thoroughly at home in fraud, malpractice and insanity cases, and often makes briefs for old lawyers.

If there is a born orator in New York it is Curtis, and his style is a marvel. Never taking many notes but thinking out his subjects, he is extremely fluent and forcible as a debater and stump orator. Personally, he is a little over medium height, well proportioned, with smoothly shaven strong face like Napoleon. His clarion voice is deep and musical. He is ready and apt in words and uses appropriate language. His long service on the bench made him familiar with the rules of practice, but with all his gifts of advocacy he has but one rule, a thorough preparation of evidence and law of every case, diligence in enforcing both, with the tone, manner and conduct of a gentleman.

THE JUROR'S OATH.

THE following opening period by Israel Holmes was originally intended to appear in "Trial Practice," but reached the author too late for insertion. It is a gem, and is given a place here:

"Very beautiful and impressive is the juror's oath: *I do solemnly swear, that I will a true verdict render, according to the law and evidence, so help me God!* In the thousand and millions of times that this oath has been taken, it has lost none of its beauty and none of its impressiveness. To him that rightfully takes it, whether believer or unbeliever, Christian or infidel, it has a sacred sanction and controlling force that raises him above all passion, prejudice, or personal bias; lifting him up so far as nature will allow, into the region of absolute duty and absolute truth—justifying—awing and ennobling him; binding his conscience and his hopes and fears to the eternal conscience and eternal power. In the spirit of this majestic oath resting upon your conscience, you are to deliver a *true verdict*, and no other, and therefore do we ask so much attention to the circumstances about to be presented in your hearing.

CONVINCING A JURY.

TO GAIN a jury's confidence one need not coax and flatter them, or beg a verdict, or try to gain favor by boasting that he knows them by name, or that they are great business men or plain farmers, and the like. A better way is to *earn* their confidence

by a full clear statement and adhering to the merits unobscured by rubbish and little trifles that clog and hinder and never produce any real result in arriving at a verdict.

Men are convinced by fairness, repelled by underhand tricks, and led with the sense of justice that they will expect for themselves. To illustrate: A carpenter sued for extra work and made out his bill in items. Defendant pleaded payment but showed some uncertainty in dates and accounts. The builder brought his dusty old memorandum book in pencil, with day and date of every item. He was very confident it could not deceive him. "Figures don't lie," he said to the jury. Counsel followed with his references to the entry: "If two men weigh grain and one of the two tallies each hopper full as they fill it, while the other trusts to his memory, no one would doubt but the man who kept tally would be the most reliable. If two men traveled to Europe and one kept a mile book, in which he marked each day's miles made on the journey, eleven days out, no one would question but he was safer authority than the one who attempted to remember eleven days with eleven odd numbers. If I have a diary of the weather for six years every day in every year, I am safer to speak of the fine days and rainy days of each season than one who guesses at it. So in honesty and justice, tally sheets tell the whole story better than many witnesses. Men forget, *books remember* all that is committed to their keeping. "Memory is uneven, treacherous, uncertain, marks remain changeless. They are made without motive to falsify, *they must be truthful.*" This is simple. Yet to

a layman is clear common sense, and they act upon it. The jury feels a sympathy with the right side. They prefer to end a controversy according to duty and equity. They often do better than the court's instructions. They strain a point to help out a feeble case for a deserving client.

What would you have done? is one of the grandest of reasons in civil and criminal cases. In Tom Marshall's defense of Matt Ward for shooting Prof. Butler in Louisville before the war, in one brilliant passage he said: What would you have done? What would you have him do under the circumstances? Stand like a coward or defend himself? And Gov. Crittenden, following in the same strain, added (for Ward was not defending himself but his brother): The law of self-defense is not so narrow. I am not to defend myself and be forced to stand by and see my wife, my child, my helpless ones destroyed. No, gentlemen, if I had no greater liberty than that, I would *raise my own wild hand and take this life and hurl it back in the face of my maker as a thankless gift.*"

Here was the touch of nature that made all Kentuckyans kin, and won a verdict of acquittal. The jury *will do right* if they can. So that in criminal cases, hotly contested, where, for example the defense is a home destroyed, all that counsel has to do is to produce that innate sense of justice, rouse the manhood, and say *what would you do under the circumstances?* to produce the result and secure acquittal. I remember two more instances, one small, one large, in importance. The first was, the shooting of a Newfoundland dog in his master's doorway by an

excited father who had just rescued his son's bleeding arm from the monster's jaws, and in the heat of passion shot the animal dead, without reflection of when or where. In his evidence, on the trial, he said: "I could not help it. I would do it a thousand times, gentlemen. You could not help it. The cry of my boy was like a dagger in my heart. *I had to do it!*"

The other instance was of a newly married man, who returned home partly intoxicated and saw through the window a young man act very familiar with his wife. He hurried in, and was met with a laugh that he did not relish. He ordered the intruder out, and both he and the wife laughed all the louder. He seized the strange man by the arm, but he was much too strong to be so handled. This was all done quickly. Turning, he took a piece of stovewood and felled the man dead at one blow. It was his wife's own brother! But he said: I could not help it, gentlemen. It was a dreadful trial. I was goaded to the heart. It was my impulse. I *was defending my home!* Nothing gets nearer to a jury than such reasoning.

THE "WHITE PAPER RULE."

THREE years ago, having occasion to go from New York to New Mexico, stopping three days in each leading city, and making such observations as a hungry student of human nature will gather of various men in jury trial practice, I found the following "*white paper rule.*" It easily became apparent that trial lawyers were not reluctant to relate their rarest experiences, which, to me, were dense with valuable information.

It has been a standard rule with many, and should be written on every lawyer's heart, that the "*good anywhere should be copied* EVERY*where.*" Acting on this rule, I often invited strong advocates to name their best rule of winning cases. The following came from a Chicago lawyer, of national reputation. "Would you be willing to name your best rule of practice?" I enquired. "Yes," said the veteran, "most cheerfully." Taking up two blotters, one full as it would hold of black ink, and the other clear white, he commenced:

"You see that blotter is about as full as it will hold, don't you?" I nodded assent and he went on.

"Now, this one (the new one) is free to take ink readily, and I compare them to every jury. The average juryman is over forty, and often a supervisor, always likely to be a man of strong will, whose mind once fixed on a subject, is not so easily changed as before he forms a settled opinion."

"Then the first consideration is, who will get the most ink on the blotter? When it is once full very little will stay on. Therefore, when the jury is

sworn, the very first thing for the defense is not to allow all of the surface of the blotter to be saturated with the plaintiff's side without something from the other side. I attach great importance to an early and impressive opening and a clear manner of presenting all facts from end to end, the secret of all being, *men will believe what they want to believe and forget what they had rather not remember.*" To me this was a complete and impressive law lecture, for ink on the blotter is not easily removed.

WINNING CASES.

THE subject most vital to a trial lawyer's practice is the art of winning cases before juries. His record will be early made, and he can govern his fortune for many years by a single victory in a single line of practice; with all this responsibility before him, with life and death at his finger's ends, how few will profit by any other than a series of blunders, to attain a reasonable degree of skill in the winning way resorted to by our shrewdest advocates? Some are so selfish that they think they have learned all there is to be known, and need only wait their golden opportunity. As well say one man has seen and owns all the rare paintings in Christendom. The novelty of argument is often the charm that holds a waiting audience. If one expects to win law suits before juries—a majority must be won or lost this way—he will early learn the advantage of striking statements and original illustrations.

Mr. Beecher's great popularity grew from his quaint expressions and apt figures of speech; Talmadge came to fame by a similar road; Gough and Collier each follow the style of speaking that appeals to the eye and heart and senses, with a unique art that is captivating.

Lincoln, through his stories, turned many a verdict that Brady would have won by pathos, Voorhees by rhetoric, and Webster by a commanding logic. The history of Corwin's career, with his jokes excluded would be mostly unprofitable; Mark Twain, Bret Harte, and Artemus Ward each establish their view of the value of *saying something* in speeches. If we come a little nearer and take a few actual cases, we will be more firmly grounded in the belief that saying things with tact, spirit and energy, is the key to conviction or clearance in very many trials. Here are three reported instances:

F was charged with an assault on E's wife with a stove griddle. He was taken far from his home and tried by a jury. Deep feeling existed. Both families lived in one house, and all know the unhappy consequences. For the people, were five witnesses, for the defense, his own statement. Counsel was called from a distance, and much expected of his address to the jury—*simply because he had a name for making peculiar arguments.* I shall never forget how serenely he first separated all witnesses, how clearly he drew the contrast of each story by itself, how poorly the people's case really matched itself. I began to think it was time for fine work—when, without a sign of any notes, counsel began his

defense by the bible story of "Susanna and the Elders." It was not over half told when he was called on to name the page, and insisted his bible was not paged, as every intelligent lawyer should know before his election as prosecutor! The jury's eyes said go on. They were evidently interested in Susanna's fate, and we could now see that the spirit of the play was in the story—when "Daniel come to judgment," and by his art of separating witnesses, released her, counsel could see that it discharged the defendant, and abruptly closed his speech with a verdict of acquittal, and this in the face of *five* witnesses!

The next was an action for trimming shade trees, not large in amount, but pointed in practice. M owned a house and lot in D, on a corner, near a planing mill. It was surrounded by tall, bushy shade trees, forming almost a solid wall of protection from sparks and fires, quite common at the mill. In M's absence the street shade trees were closely trimmed, and a distant relative took the responsibility of including M's corner with the rest, just for the looks of the street.

The bill was rather unexpected, and accordingly resisted. A young lawyer defended in this singular argument: making a full and excellent picture of the trees and beautiful dwelling, as they originally looked, with limbs and leaves in full size and completeness; he then sketched the premises, in all their barrenness, after trimming, and actually made the trees look so like telegraph poles, and the house seem so liable to take fire from exposure to the mill sparks, that the point was convincing and complete

in the boyish picture, which he would point to with great confidence, as showing not only *no benefit* (the only ground, if recovery was had), but a *positive damage to his client's property.* He wound up a terse and taking speech by citing the statute on disfiguring streets by destroying live trees, and won a signal victory. I have always thought there was more argument in that picture, than a two hours speech would have been to the jury, one of whom remarked: "I have served fifteen years on juries, and never saw a case before so clearly put and illustrated."

The last instance of novelty in argument, was in a replevin case to recover to the owner a large, black stallion, known as "Black Jack." Simons, the owner, imported him from England. He was very strong, and few could manage him. Being short of money, he was mortgaged for two hundred and fifty dollars, which, when due ,was unpaid, but to save suit one hundred dollars more was advanced by the mortgagee, for a bill of sale of the animal, granting the vendor possession, use and income during the current season. It being also agreed that sale should be made at eight hundred dollars, in case of an offer. A lawyer, having a claim in judgment against original owner, levied on the horse, after first securing a written statement as follows:

"I hereby warrant *my horse*, "Black Jack," to be seventeen hands high; sound, English blood, seven years old, and that there is no claim against him, *except a mortgage* to *one* Wright, for three hundred and fifty dollars."

"Witness, J. WRIGHT," "Signed, "J. Simons,"

Seeing his horse taken from him, as it were, Wright brought replevin—showed chattel mortgage, bill of sale, identified horse, and rested. The above warranty was then read in evidence, and something proved as to the value of the horse, and its inadequate price in the three hundred and fifty dollars, compared to the real value of the property. Plaintiff's case began to look hopeless, as in that state, if the parties intended what they said in the writing, it was a chattel mortgage and no more, even if called a bill of sale. But Wright is recalled, and said he witnessed the paper in a mere formal manner; that the lawyer who asked him to, pretended to be a granger, and did not give him time enough to comprehend the wording he had signed. The trial judge was inclined to call it a mortgage lien, and instructed the jury to find accordingly, before the closing words were said to the jury. The ingenious position of plaintiff's counsel was something like this: We agree that Simons imported, owned, mortgaged, and finally sold a large, valuable horse to Wright. Here is the horse: a splendid, large show picture was exhibited. It was both mortgaged and sold to Wright. It is folly to deny such a statement. Now, if *Wright never sold it back*, then it is unlawful to take *Wright's horse* to pay *Simons' debt*. The bill of sale and mortgage are honestly made and honestly recorded. Could not Wright go, at any time, sell *his* horse to any man? Certainly! Did he sell him to any one? Never. Here counsel read sentence by sentence of the "warranty," and said *that* is not a bill of sale, but a descriptive lie, and does not pass the

title to any one. "But," continued counsel, "what of the difference in money advanced and value of the horse—the equity side? Why, *this about it:* replevin suits are not in equity; they are suits of *law* to settle legal titles. Men must *make their own* contracts; courts and juries simply interpret them by common sense principles. Here was a powerful horse, a man in debt, cramped by a mortgage, allowed in addition to three hundred and fifty dollars cash, the value of a year's service, worth nine hundred dollars more; think of the certainty of something down; something to accrue to original owner! and the great risk to Wright in advancing large sums on such a 'white elephant' (or black one), that might cast himself, and die or be disabled any day! who of the jury would advance three hundred and fifty dollars even, and board the horse a year, to get it back? Then, the price is fair. The horse belongs to Wright, who never sold it, and is entitled to its possession," —which he obtained.

It is this simple style of stating facts that convinces laymen. In all his arguments, Abraham Lincoln's art was in his illustrations. I remember of speaking with his old neighbors at Springfield, about the year 1870, while his many virtues were fresh in the minds of all Americans, and all comments on his legal success pointed to his happy faculty of *utilizing incidents*. One said: "Mr. Lincoln was so quaint that we always expected something; we went so see him get the jury; he did it handsomely. He never made any long, dry arguments. His speeches were crisp, meaty and

full of something to carry home." Another said: "He had a knack of illustrating his points by some comparison which was always effective. Everything he said had meaning in it, and was expressed so that it would bring its full meaning home to the most ignorant person. He was—if I can use such an expression—the most illustrative man I ever met in my life. He could illustrate by a jest or a little anecdote, which would have volume of significance."

WINNING CASES.—NO. II.

"ONCE well done is twice done," makes a good motto in all legal victories. So many cases are poorly tried in the lower courts that the work is repeated a great many times before it is completed.

The dread of litigation is due to its endlessness and costliness. Lawyers suffer much censure where courts are to blame, but very often deserve some rebuke for delay growing out of poorly tried cases. The difference in skill is like the finish of a painting—the fine art that is paid for most liberally.

Nothing brings business like success. Wealthy clients are the men most willing and able to promote an attorney in practice, and to these he will always appear in one character; either reliable or unreliable. They have no time for needless litigation. What they most want is certainty of results and an end of controversy. This is the merchant's practice in his own business, and he prefers promptness and dispatch with others

In view of what has already been stated, and with an eye single to securing business, no point in practice can be more important than one which secures the right result the earliest. I can better illustrate by an actual case lately tried in a western city, known as "the reaper case."

Lockwood was agent for a reaper company, and called on Griffin to sell a high priced machine early in the harvesting of 1883. Terms being agreed upon, the machine was delivered and set in motion, but the note which was to be given in payment remained not signed—*to be sent on after Griffin's son should try the reaper.*

On a thorough trial, at the end of harvest, Lockwood called for the note and learned that the machine failed to satisfy the son, and would not be accepted. Delay past the selling season, and disappointment generally, created much feeling between the parties, and either stood ready to fight the other through the highest court to the last ditch, if need be, for justice. At such a time trial lawyers too often partake of the spirit and bad blood of the contestants. In this case great bitterness was shown, up to the drawing of the jury, when, by adroitness of counsel, it suddenly changed to a more friendly contest. The evidence pointed to a sale and delivery with a slight condition of reserve to suit, or should satisfy the buyer's son. This condition being made mainly on defendant's testimony and the sale by plaintiff's agent, the case turned on a wire, as we say, either way, plaintiff or defendant. The jury gave defendant the benefit of the doubt:

Whether the minds ever fully met on one thing at one time and constituted an absolute contract.

Defendant's counsel confined his evidence and argument to this simple inquiry, and with the best of temper praised the truthfulness of all witnessess, eulogized reapers, extolled their agents, and enlarged upon the growth of improvements; insisted the reaper was one of the best but the sale had a condition, and the buyer sought to enforce it. The jury, thinking their turn might come sometime, found for the defendant. But the effect of good humor or the high compliment paid the reaper induced the agent to take it back, pay the costs and end all trouble. "That is the kind of litigation," said a listener, "that would make lawyers more respected." How different would a little abuse have resulted?

Chauncy Schaffer, now of New York, tells of his early experience when lawyers were paid in boots and shoes, or produce; before large fees were dreamed of. He lived in western Michigan, and John Van Arman, his senior, practiced law at Marshall, in the same county. One day an excited shoemaker retained Schaffer—or agreed to—in an assault case, then adjourned for a week, to come off before a jury. Schaffer was to travel twelve miles and be ready early, and do his best, and not let up on his opponent, but "everlastingly pummel him before the jury." He was to receive two pairs of boots in payment for his services. He had not heard the case nor seen the witnesses but was to call early enough to learn the circumstances.

On the trial day young Shaffer was early on the

ground and ready for action, when to his chagrin the defendant had hired Van Arman, now of Chicago, and decided he needed no more counsel. Schaffer was indignant. It was his first case. He had studied a week and dreamed of it nights till it seemed a part of his being. No one appreciates this better than one who has been talked out of a case on the ground of being too young and inexperienced.

He finally asked for one pair of boots, and he would go home. This was refused, and Schaffer said: "You are unreasonable—you deserve to be defeated," and said it with such emphasis that the prosecuter invited him to take a retainer on the other side, and by consent Schaffer remained in case for the people.

The trial came on after dinner. Van Arman opened rather strongly, followed by others, with Schaffer to close. He was large, boyish and timid, but powerful in his personal convictions. He eulogized Van Arman's effort, and said only two reasons prevented it from carrying the jury and securing an acquittal: *one was the clear guilt of the defendant, and the other his treatment of his chosen counsel!* (sensation.) He went on and graphically related the story of the defendant's guilt, and turned to his "secondly" with all the fervor of a Methodist bishop, and with the naturalness of an actor told how he had been retained and "studied the case day and night, and finally was discarded and about to be defrauded of his boots for the winter, and have his maiden effort burn in his brain, unknown and unheard by his schoolmates and neighbors!"

The jury were now fairly electrified. "And such is the character of the man who provoked this quarrel—provoked me—provoked us all—and attempted to swindle this community out of the ablest effort of my life!

With much more of this line, young Schaffer played upon the minds of his delighted hearers for an hour, amid cheers for his wit and sarcasm, till the whole court room gave assent to this theory and the jury said "guilty." The court fined defendant $100.

Shaffer never won a finer victory. He is now nearly seventy, vigorous and hearty, but this was his start in practice. The suit broke up in a row where some forty quarreled in the bar room, and it is said that defendant really got an extra beating in the last scuffle. The lesson is a clear one. Win your cases honorably and treat your opposing counsel fairly. It makes business.

WINNING CASES No. III.

When Dr. Agnew made his skillful opening in General Garfield's side, relieved the pain and let the world breathe freer by a single act, thousands applauded science. That science was experience. When Graham cleared McFarland for shooting Richardson in the Tribune office in '72, people said "so much for sham insanity." Graham's act was experience. When Ford was acquitted recently in Missouri, men murmured at the ignorance of juries.

Time has demonstrated that General Garfield's doctors were skillful but science was most decidedly wanting. All of the instruments were deceptive on the location of the bullet, on its direction and the extent of the injury.

The public were behind the age in the McFarland case, as every important murder trial since has clearly shown. And to-day it is a noted fact that no jury can be found to convict a man or woman well defended, who has taken life in defense of their home and fireside—especially where one has punished the destroyer of his wife's virtue, and the family were shown to live happy before the victim meddled with forbidden fruit. Laws are not strong enough, statutes not binding enough to stay a husband's hand in this species of self-defense. Juries know it, and lawyers realize it everywhere.

As to the acquittal of Ford, something of prejudice may have crept into the jury box, but the real cause of the verdict was a *lack of belief in the people's evidence*. There was a general over-confidence that is the means of losing many cases.

People were too sanguine of skill in Garfield's case and over-confident in the Ford case.

There is a common disposition to underrate our enemies. Lawyers too often, on the statement of clients, assume that there is no defense, or that there is no *other side* to the question. Defeat lurks along this line always—success lies in a different direction.

It is well to assume that the jury will hear the other side, that they will see any weakness in your witnesses, and balance the evidence. That which is

fairest produces most justice; facts given with the most candor, enforced by the clearest circumstances, will capture the common sense of a jury.

To be convinced of this fact, spend a half hour with some good juryman, fresh from a well contested suit in which you were defeated. He will teach you more than a law lecture. He will show you that you have much to learn on the subject of clearness, much to prove that you took for granted.

If counsel will note down and preserve for a dozen years the rare points of practice, and the daily little victories in courts under his immediate notice, he will profit very greatly by the habit. If law journals, like medical monthlies, would tally and preserve for reference the strange incidents, and their application to daily trial in every state, it would form a fund of information invaluable in practice. This must be the end and object of more in the profession before we shall profit by the wisdom of experience. There is no patent on such knowledge. It is no injury to a lawyer in Ohio that one in Kentucky has found his best rule in practice. There is very little danger of rivalry between counsel, and all that is done in an open court room is public property, for the public benefit.

I have often observed how carefully all special cases in medicine or surgery are kept and reported in the interest of science, and I predict that within a score of years the science of law will copy this valuable practice, and more than this, the power and influence of well managed evidence in trials of fact before juries, will become a branch of

study next in importance to elementary principles * * *

Robert Tooms and Alexander Stevens once contested a suit growing out of a doctor's bill that is very instructive, as well as amusing. After proving the number and value of the visits, Toombs rested, and Stevens told his client the case was clearly made out for plaintiff, and left no room for defense.

Defendant was greatly displeased, and followed by saying, "I hired you to speak, and I want you to speak." "But," rejoined Stevens, "there is nothing to be said." "Then," said the stubborn client, "if Bobby Toombs won't be too hard on me, I'll speak." Toombs said he would not, and Peter proceeded (I abbreviate slightly from original report):

"Gentlemen of the jury, you and I is plain farmers, and if we don't stick together, these lawyers and doctors will get the advantage of us. I ain't no lawyer or doctor, and I ain't no objection to them in their proper place, but they ain't farmers, gentlemen of the jury. Now, this man, Royston, was no doctor, and I went for him to doctor my wife's sore leg, and he put some salve on it, and some rags, but never done it a bit of good. I don't believe he is a doctor anyway. There are doctors, sure enough, but this man don't earn his money, and if you send for him, as Mrs. Sarah Atkinson did for a negro boy worth $1.000, he just kills him and wants you to pay it."

"I don't," thundered the doctor.

"Did you cure him?" asked Peter, with the slow

accents of a judge with a black cap on. The doctor was silent, and Peter proceeded: "As I was saying, gentlemen of the jury, we farmers when we sell our cotton, go to give value for the money we ask, and doctors ain't none too good to be put to the same rule. And I don't believe this Sam Royston is a doctor nohow."

"Look at my diploma, if you think I am no doctor."

"His diploma!" exclaimed the orator, with great contempt. "His diploma! Gentlemen, that is a big word for printed sheepskin, and it don't make no doctor of the sheep as first wore it; nor does it of the man as now carries it; a good newspaper has more in it, and I show you that he ain't no doctor at all." The doctor was now in a fury, and screamed out:

"Ask my patients if I am not a doctor."

"I asked my wife," retorted Peter. "She said she thought he was not."

"Ask my other patients,', said the doctor.

This seemed to be the straw that broke the camel's back; for Peter replied with a look and tone of unutterable sadness: "That is a hard saying, gentlemen of the jury, and one that requires me to die, or to have powers ceased to be exercised since the apostles. Does he expect me to bring the angel Gabriel down before his time and cry aloud: 'Awake, ye dead, and tell this court and jury your opinion of Sam Royston's practice?' Am I to go to the lonely churchyard and rap on the silent tomb and say to them at rest from physic and doctors' bills, 'Rise up here, you, and state if you died a

natural death, or was hurried on by the doctors?' He says ask his patients, and, gentlemen of the jury, *they are all dead!* Where is Mrs. Beasley's man, Sam? Go ask the worms in the graveyard, where he lies. Mr. Peak's woman, Sarah, was attended by him, and her funeral was appointed, and he, the doctor, had the corpse ready. Where is the likely Bill that belonged to Mr. Mitchell? Gone in glory expressing his opinion of Royston's doctoring! Where is that baby of Harry Stevens'? She is where doctors cease to trouble, and the infants are at rest. Gentlemen, he has eaten chickens enough at my house to pay for this salve. I found the rags, and I don't suppose he charges for making her worse, and even he don't pretend to charge for curing her, and I am humbly thankful that he never gave her nothing, as he did his other patients, for something made 'um all die mighty sudden."

The applause was great. The doctor lost, and Peter won.

WINNING CASES.—NO. 10.

Courage in Court.—A very brilliant defense was made by General Rousseau, in Louisville, in 1857, where a remarkable trial was conducted with a spirit and energy seldom witnessed. It appears, as reported by Harper Brothers, that a family of six persons named Joyce were murdered, and their bodies burned near the city.

Suspicion fell on some negroes of an adjoining plantation, who were seized, threatened, and hung up until half dead and a confession sought to be gained,

but was refused. One was tied to a stake and a fire kindled near him, when he, to avoid burning, confessed that himself and the others committed the murder. They were arrested and placed in jail to await their trial. The master believed them innocent, and retained Rousseau; no other counsel could be retained.

The excitement was tremendous. The undertaking of such a defense single-handed was brave and courageous. Many of the general's friends urged him not to sacrifice his popularity by siding with such debased criminals. Rousseau replied, "the greater the guilt the greater the need of a good lawyer to defend them," and said he did not believe in confessions extorted in that manner. Then many cursed him openly as an "abolitionist." The trial brought a crowded court room. The sole survivor of the Joyce family sat inside the railing, with a crowd of his friends just outside the bar. The feeling of an outbreak was only restrained by a certainty of conviction. But the excitement was painful, and fears of a momentary outbreak prevailed.

Rousseaus conduct was prompt and daring. The confession of the tortured negro was the people's sole evidence. He told in a hesitating way how the murder had been comitted and the house fired in several places. That after it was encircled in flames, the youngest child, a girl of two years, had been overlooked—now aroused by the light, called to her mother to know if she was cooking breakfast. A death-like stillness followed, when one of the jurymen, shading his face with his hands, muttered "Tut, tut, tut!" in a half hissing sound heard over

the court room, when a cold shudder run through the crowd, and in the excitement young Joyce sprang to his feet and said, excitedly: "*I want my friends who think these negroes guilty to help me to hang them.*" A wild shout and clear clicking of pistols was his answer. Joice drew his knife from a sheath and sprang towards the prisoners. Rousseau caught him by the throat with one hand and clasped the wrist with the other, thrust him back to his seat, and confronted the crowd with the aid of two policemen. The crowd made a rush in the direction, and Rousseau said: "Tell your friends, Mr. Joyce, while they attend the negroes I'll attend to you." Joyce waived his friends back, and the judge ordered policemen to aid the sheriff to protect the court and keep order. "Don't do that, your honor," said counsel "we can protect the law and its officers. There are enough true men to protect the prisoners from mob violence." "Who are your friends?" cried the furious crowd. "You are," said Rousseau. Then he turned, and in burning words, told them to protect the young man from committing a crime which would forever disgrace them as a law-abiding community. The crowd calmed down and said, "He's right! he's right!"

The trial proceeded quietly to the close, when the verdict of "not guilty" was given amidst terrible excitement. The prisoners had been removed in time to secure protection. But the people would have blood, and the same night a mass of men surrounded the jail, removed the prisoners and hung them to trees in the grounds of the city hall. Mayor Pelcher was hit by a missile and died from the injury.

In several trials Rousseau defended negroes from aiding guilty parties in escaping from slavery—then a high crime in Kentucky. But few men could bear such a character. He later became a senator, and famous as a general. And later, was employed to assist in a famous case—the trial of Jeff. Davis for treason.

This is the same kind of bravery that Seward showed in the Freeman case—denounced as he was for defending a negro who had killed the Van Ness family, he believed in the prisoners innocence, or insanity, and followed his case, after defeat, to the court of appeals, where a reversal was secured, and pending a new trial, Freeman died in jail. His brain was examined and found to be actually rotten.

Cases of courage in the court room would fill a volume of rare reading. They are known in almost every state. But I have seldom known of greater courage than that shown by the late Senator Jacob M. Howard, who, while prosecuting in the great conspiracy case, became convinced of the innocence of the accused (forty men for attempting to burn the Michigan Central Railroad bridge at Niles), said: "It is enough for counsel to deprive one of his property, or rob him of character in a contest for his client, but when it comes to taking away his liberty for years, which is in effect his life, and depriving his kindred of his protection, while his memory is branded with the stigma of a felon's name, it is far more creditable and honorable to lose a case, and go to one's judgment hereafter, without the tarnish of human blood on his garments

for committing a higher crime than the accused was charged with."

TRIAL RULES.

THE selection and proper treatment of a jury should be classed as one of the fine arts; it is a thing very difficult to do properly; a life of close observation and active practice, with a natural adaptability, are required for its mastery. The writer, in his recent work on "Trial Practice," gives "ten trial rules" which are here quoted:

1. Select young jurymen, with warm, intelligent faces; exclude officers of every kind. Become early familiar with the winning facts of both sides. Conceal them, and instruct parties and witnesses to keep silent and let the counsel do the planning of theories.

2. Find what opponents are likely to prove and how probable will be the showing, and, if false, how it can be denied or met by fair explanation.

3. Nothing takes so well as common sense. Be reasonable. Never weary a court with technicalities, nor a jury with quibbles, nor offend a witness by brow-beating, but know what you need to make a case and stop when it is established, so that the jury may see the sharp end of your evidence.

4. Cross-examine only with an object—bring out the point and don't cover it; avoid all abuse of counsel or parties; such quarrels draw attention from the issue, and cause disagreements, while kindness and fair play win a lasting victory.

5. Explain the reason of the law to the jury, or in their hearing. The average mind is wiser than many suppose. But be sure the jury know the consequences of the verdict.

6. Counsel, and not clients, should control cases and trials.

7. In opening an argument, select first the points on which there is least dispute, and, if possible, those nearest with your position. Pass to the others with confidence, and carry the jury with you by reason, not by threats, not by bombast. Leave appeals until after the convincing is accomplished. But feel what you say, and believe what you say, always.

8. Treat a jury with unbounded confidence; like begets like, under all circumstances. Men are not driven by threats, but persuaded and convinced by reason and common sense when it is clearly illustrated. Jurymen prefer to do right. Show them the right road in a plain and clear manner.

9. The strongest reason is: What would you have done under like circumstances? Human nature finds excuses for wrongs that lead to good results and are justifiable. Men generally do on a jury what seems most reasonable, if it is shown to them in a sensible and convincing manner.

10. There is no opportunity better than the earliest. Let the jury know from the beginning that you believe in your rights and will fairly enforce them, while their minds are as clear as *white* paper. "Write it on their hearts and engrave it on their bones," that your client has the rights you contend for and will ask for none other. But insist

upon justice. On this be so full, so determined, so fortified with law and reasonable evidence that it will stand like a mountain, unshaken either by quibbles or appeals.

SELECTING COUNSEL.

THE wisdom of a chancery lawyer may be lost with a jury. It is a very common fault with speakers to reason over the heads of their hearers. For this reason, the country pettifogger outwits the wiser counsel from a large city. This is mainly done by ridicule. Very few juries have the stamina to withstand ridicule when woven into a closing argument, and the only way to meet it is by an open analysis in advance of the final speaker. If adroitly done, this method is effective.

In a case of a couple orphans against an insurance company, the selection of counsel was left to the executor, who did it with rare discretion. The closing of the trial seemed to indicate a decided defeat of the claim, which was one of a series, amounting to $20,000, and counsel's services in such cases are not easily over-estimated.

The case lawyer was extremely rasping and unpleasant in opening, and dwelt upon the technical grounds almost tediously. He was followed by two pleasing speakers on plausible theories, and the homely speaker permitted to sum up the plaintiff's case in two hours after dinner. Nothing in his appearance spoke for him. Nothing of his voice had

been heard in side discussions. He was reserved, like the race-horse at the county fair, to make a superior heat to the spectators.

I can see him as he stood up timidly, age over seventy, tall, uncouth, awkward; clear Scotch accent, with a ring to it like a triangle in a band. He began low and full and grew deeper. Men that had turned down the stairway as they saw him rise to speak, turned back to catch the soft rythmical sentences, measured and low, and charged with meaning, and one by one crept back on the benches and listened. The room was hushed as at a funeral. I had decided to go with the rest, but was spell-bound at the opening sentence that soon followed, which was pronounced by the late William A. Beach to be the most touching period he ever read of any American argument. I let the words tell their own story. Raising his eyes to the ceiling, he stood like one transfixed in awe and majesty, and said: "Oh! I can see her now; it is early twilight; it is winter; the snow is falling fast and slippery, whitening the little plank walk to the cistern. She has company; she hurries down the walk, catching up a pail, leaving the hook hanging over the curbing, bending low, she slips, she falls, the water covers her, no one hears, she is drowned! It is an accident; and I almost hear her say, as she looks down to you, to this upright judge, this honest jury: 'Gentlemen, you may cheat my children, if you will, but spare them the burden of dishonor; the money will be a poor pittance at the most to that priceless character that my innocent children should inherit.' We plead for the money that they deserve, we plead for the

character that they own, we plead for the justice that their evidence demands; make their lives happy and their mother's memory sweet—sweet as the day she bade them good-night—the night before the night of death—little dreaming of the sudden end, little dreaming of the scandal they should meet, little dreaming she should be held up in horror to frighten a jury from duty; held up in shame, and deceased to blot out the fair name she had earned for her children! You will not stain these little ones, gentlemen, you will not pay a claim that way, you will not cancel a just debt by a mean insinuation of wrong? Why, gentlemen, they would have you think that this woman loved her little ones so much that she dared the pains of hell, and drowned herself that they might be made rich, though orphaned! No crown of glory she held in prospect, no garland of the blessed to be wreathed upon her brow!—only a sordid fraud, a leap in the dark oblivion of the great hereafter, to get gain!"

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"Gentlemen, my work is almost done, poorly as it is. I must trust to you to do a better work. And my little clients (here the speaker laid one hand on each of the clients' shoulder, and amid the hushed silence of rapt attention, said): My little clients, may God bless you! I have done my best to make your name an honor to our state. But oh! how poor and weak my words have been. And you, gentlemen, even now, by your silence and interest in this case, methinks I hear you say: Stop! Delay no longer! Let us begin this work of justice! Stop! that we may restore these orphans to their own—to that

pure character that they will love to honor—a character as pure as they knew her on that last and long good-night. Stop! that you may wipe away all tears from these orphan eyes, and plant the sweet rose of a mother's love in their bright young lives, to grow, bloom and bless the world for their living in it. Stop! that we may right this wrong at once. Oh, God! put it into the hearts of this jury to see the truth—to vindicate a mother's name and a mother's love to her helpless children."

"Oh, God! remove the mist of this case, reveal the truth to these jurors, let them see their duty and give them strength to do right, and do it, remembering that some day—yes, an early day to most of them—when they shall be called home to leave, it may be, dependent children and a sacred memory of a good name, that of future juries they may expect the same just finding that they have found for us—a verdict and a vindication."

Jury found $5,300, and the other three cases were duly paid. The case was an ideal jury trial. I have reported it from memory.

THE LUCK OF LAWYERS.

CONFUSCIUS says: "The archer who misses the centre of the target turns to himself to find the cause of his failure." He was a wise teacher.

A lawsuit is such a costly luxury to either party that failure becomes an important matter. One would often pay the expenses of both sides to be sure of being a winner in the contest.

It is so humiliating to be defeated, that great anxiety follows a litigation from beginning to end. But to fail on a trifling lack of evidence—a thing that can seldom ever be supplied after the failure, is a bitter disappointment, and must lead one to *look to himself!*

It is not possible to win all cases, and hardly probable that over half, taken as they come, will stand the test of a higher court's review. But of the sorted cases, a large majority should be reasonably certain in results. For this reason wise and expensive counsel are engaged to watch every turn and insure a victory. These are often no more certain than alert and artful young lawyers.

As court victories generally lead to an increase of business and wider reputation, while losing cases will often ruin a good law practice, to win is highly essential to success.

Reputation for tact or eloquence usually begins in the bar and extends throughout the county, then the state, and possibly the nation, or even becomes world-wide by the importance of the controversy.

But no matter what one's talents are or what his ability to try cases may be, if he has an inland city practice and no cases of public interest, he may remain for a life-time in a narrow range of practice. So the luck of a lawyer is his class of cases, success in court and location of business. A New Yorker has twenty to one chances over a man in a Kansas court room to be known as successful. This is a large element of greatness—the notice that is taken of his trials and triumphs, and the attention that such victories deserve.

This is not intended to make everyone start on the keen run for New York to begin practice—not by any means. You may be a thousand times better off where you are. The metropolis is already overcrowded with advocates. Governors of states, generals of armies, senators and wealthy men of national renown and brilliant talents are there before you. They are established, and like the great daily papers, have their patronage that newly made ventures will hardly disturb. As well might all editors start for a large city who now enjoy a fine income at home, and there would be likely to starve.

But it may be noted that lawyers and newspapers of real merit and originality will command attention wherever located, and in like proportion to their tact, skill and eloquence will attain to eminence. All things come to those who work and wait.

STARTING IN LAW.

THE study of law to a beginner, is like entering a dark tunnel, the start is always the darkest. Gradually light breaks in, and soon it seems like daylight. This is due to the fact that it seems a large undertaking. It is large. It *is* dark!

To one who has been across the continent several times, the journey appears much shorter, and to one who sees far enough to know the reason of rules, maxims and definitions, and the object of knowing them, and their use and application to principles involved in trials, and how verdicts are controlled, a

greater relish is given to the different branches of study used in explaining these principles.

It is not right to try a short cut through law studies, for there is none. But sometimes, like a surveyor's measure of a lake, we may be guided by two angles to find the other, and tell much that is essential and useful from one outside point to another.

All mystery should be omitted at the beginning. The plainest facts should be stated with their illlustrations, and simple principles gathered in little groups like familiar stories should be dwelt upon to feed the mind, interest the reader, and open little doors first to that part of the law which leads directly into the office and court room. This should be done to incite a lively interest in the theme and its requirements.

Instead of this method, we find nearly every student first put at copying, or reading Blackstone—one of the heaviest law works of all history—and especially so to a very young student. All admit that Blackstone is the basement story of law practice. But all are not sure that one in beginning will find interest in Blackstone. As well place a student of ten years to the study of Shakespeare.

The start in law is always an experiment. Early enough, if interested and gifted, will the young man be led to know that he must build on such authors, but the *start* in law should be made more gradual by becoming familiar with the range of study, and to this end some clever counsel should talk over the books in half-day lectures, and thoroughly and early impress the beginner with their use and reason, as

the object of his undertaking. It will be well to say something encouraging of the wide fields surrounding so dense and dismal a forest through which one must go long and fatiguingly to find the high prizes of promotion.

INCIDENTS IN ARGUMENT.

IT IS said of Chief Justice Coleridge, of England, that he was first heard of through a famous murder trial, in which, while he was closing to the jury, the lights went out, and when relighted he added the forcible words: "The life of the prisoner is in your hands, gentlemen. You can extinguish it as easily as that candle was extinguished but a moment since; but it is not in your power to restore that life once taken as that light has been restored." The argument won.

So an obscure writer first attracted the attention of a London editor by the graphic description of "A night in the Thames Tunnel," and being sent for admitted that lacking lodging money, he paid his penny fare and stayed out the long hours with other like destitutes. He was placed in an Edinburgh printing place—£200 a year—and a few years later created a sensation by his "Life in London," that had a marvelous sale.

The incidents in these arguments called attention to their brilliancy, his genius and capacity.

Mr. Moody's description of the millionaire prisoner in Ohio penitentiary, after 33 years of confinement; of his long persistent quarrel with a railroad

company in the courts, (for crossing his farm) and, anger at defeat, and his placing an obstruction on the track one dark night, that threw off the train and killed several persons, and his final conviction and life sentence; and a few years later of his finding a thriving city grown up on his farm; divided by his supposed enemy, the railway track; of his being made a very wealthy man by it, yet left a miserable captive within prison walls, was intensified by the fact that Moody had personally known the prisoner and learned the story from his heart-broken language.

The same speaker, who is a model in making arguments of incidents, tells of a Chicago defaulter in a county office, who a few years ago, concealed himself from the law officers and remained day after day secreted in his own city, night after night he would steal into his family room, walk silently past the sleeping children, fearing to wake them lest they should tell their school mates and reveal his hiding place, and at last how he woke them with his farewell kisses, surrendered, pleaded guilty and was sentenced to nineteen years imprisonment. Moody tells it directly from the prisoner, with graphic power and marvelous effectiveness.

It is not so much the story told, as the fitness and timely application that convinces The little touching references to the surroundings of a story, like the kissing of his children in the dark, his creeping as by stealth to take a last look, are touches of nature to awaken emotions in all hearers.

I remember talking to a Texas lawyer who enforced this lesson most keenly by a point in his per-

sonal experience, which I once related with effect in a different kind of case, and this is the pith of it (for in all articles I write with a narrow column and limited space ever before me): "I was thinking," he said, "how I could bring home to the jury the fact that long imprisonment means death, when I thought of the long trial we were engaged in and their own anxiety for release, and I said: You that have been from home but a month on this jury, how the days have dragged on, how the nights have seemed long and weary; how you have longed for a sight of the old farm house, of your cattle, of your wife, of your little girls and boys, who are even now wondering what keeps father so long away on the jury. But how short it is compared to fourteen years of twelve long months each; five thousand days and five thousand nights! alone in prison, without hope, without comfort, without pure air, without family, without freedom! Such endurance is worse than death. It is a million deaths!"

He won by it.

FRIENDS AND MONEY.

A GOOD bank account is a means of creating courage, confidence and business. It is kept good by careful investments and not drawing out quite all that is deposited. One had better charge less and collect cash and bank it than keep open client accounts—they go elsewhere while in your debt and care very little about past services.

It is a great loss to lawyers if suits are brought without foundation. Far more cases come to office than deserve to be placed in court, and a very sure test in sorting out the good from bad ones is by asking a large retainer on doubtful cases, stating it is for the very reason that they are doubtful, and require more attention.

The client who says he has a good case is too much interested to decide on a matter of that nature. About half that he says is not capable of proof under the strict rules of evidence, and one quarter of that may be denied by the other side, and leave the case rather slender. He will weaken if the advance cash is considerable.

To avoid offending the other side uselessly will double one's business in the long run, while offense given to please one client will react in many instances. The client you appear for may not always be such, and the adversary may be in position to judge of your unfairness if attempted. But never try to please both sides except by doing right.

Claim about as much for your side as can be shown by circumstances—neither too little or too much. Else by over-reaching you create distrust, and by under-estimate you weaken confidence. Men are so human that they will not over-credit poor humanity. Still you must win. Your fees depend on victory well earned and fairly won.

Fairness is such a jewel in practice that every trial increases its brightness. The man that juries take to is one who soon makes business through popularity. If a hundred men all say something good of a

lawyer—and one new one each week—he will not long remain poor or lacking in cases.

The man that *carries his heart into cases* is the one who convinces others by sincerity, and once in the possession of public confidence he may look for his share of its patronage. Estates and financial interests fall to the lot of the worthy, and affections cling to the successful and diligent.

To use others as we would be used by them may sound odd and simple, but no better motto has ever been invented on earth or from heaven. It is a rule of business that makes character, and what is great riches with a soiled reputation?

The boys that grow up around us are the men of the future. They start from college with a longing to be either wealthy like Bliss, eloquent like Beach, or great like Webster. A passing word will help them. They will return it many times in giving you a good name and deserved honor.

In the long run of trade, business and professional life, the one great rule will govern most people, and that is seldom ever considered; it is this: "*Success in life, in anything, depends upon the number to whom one can make himself agreeable.*"

TO CROSS-EXAMINE WELL.

THINK first what an icy pavement you tread upon; think how a willing witness may say too much that had been unproved without him; think how the rivet may be clinched and the strength redoubled by facts too often repeated and committed to memory; think how you may develop new theories for your adversary, and act with quiet discretion.

The art of cross-examination is to show a conflict of testimony. It may not be successful, yet, if skillfully worded, it will convince some on the panel that you have at least moral evidence of the facts aimed to be established. It is not the place to exhibit smartness; that will be better if concealed. To entrap a false witness, to confuse a timid one, to encourage one who will aid your theory are good uses of this high art.

Most young lawyers think they appear dull if they pass a witness without "tearing him to pieces" under rigid questioning, and find that they have fed their enemy at every question. Older advocates use this weapon with tact and caution. They have tried the sabre exercise too often, and remember the deep scars it produced on their clients.

Three kinds of witnesses may be shaken by cross-questions: (1) Those who swear recklessly. (2) Those who swear defiantly, and (3) those who swear falsely. The last named may be impeached, if he fails to impeach himself, by his own story. Only a few persons can continue long in telling falsehoods without detection.

The fine art of cross-examining is in making your

case out of an opponent's witness. This is almost always done by a gentle and delicate leading process, coupled with a concealed kindness that fascinates and encourages, while it creates the reasonable doubt or supplies the broken thread of a story that you are seeking to establish.

Of all men puzzled by cross-questions doctors are the most pliable. They deal in strange phrases and queer theories, and out of twenty or thirty ten will admit that all men are at times a little unanchored in intellect. They will swear through a series of vivid dreams, temporary insanity caused by jealousy, or prolonged litigation, by a quiet and well followed invitation.

There are no better rules of cross-examination than five: (1) Know what you need, and stop when you get it. (2) Risk no case on the hazard of an answer that may destroy it. (3) Hold your temper while you lead the witness, if convenient, to lose his. (4) Ask as if wanting one answer when you desire the opposite—if the witness is against you, and reverse the tactics if he is more tractable. (5) Treat a witness like a runaway colt; and see that he does not get too much the start of his master, and if he does, let go of the reins at the first safe turn in the testimony—but if you see any object to break his running, call the turn quickly.

L. K. Blackburn,

MAJ. C. H. BLACKBURN.

MAJ. C. H. BLACKBURN, one of the first criminal lawyers of the Southwest, is over forty-five, tall, strong and impressive in appearance, powerful in argument and highly rhetorical in language, is a Virginian by birth, and, like most Southern lawyers, is a genial, courteous gentleman. He is an acknowledged leader in the defense of capital felonies. An able advocate, uniting a rare gift of oratory with the most convincing logic, possessed of a strong persuasive language, combined with a thorough knowledge of practice, he arouses the emotions and convinces the judgment.

To these qualities and accomplishments is added his great knowledge of men and human nature, making him not only a powerful lawyer, but a leader among men. As a cross-examiner he excels, while with a corrupt witness, whom he encounters, his power is soon manifest. His life is devoted to his profession and a large law business in Cincinnati and adjoining cities.

THE GET READY RULE.

THE late Judge Curtis, of Boston, gave hints as a basis for the following trial rules that are not so generally known as they should be, and yet they very forcibly apply to criminal defenses:

1. Pay little attention to the good side of the case at first, that side will take care of itself, but be sure you look well to the bad side—not forgetting to explore the strongest form of the proof, and knowing that an opportunity to prove even what is false may be used by your adversary, unless you have certain means to refute them.

2. Never try to disprove what has not been proven, and supply thereby the missing link in the enemies' chain of evidence.

3. Never forget that an innocent person, with enemies, may be in a more dangerous condition than a guilty one with friends and influence.

4. The pulse of the people beat nearest together through the colums of the press, and a few wicked papers may tell a jury much in half hour accounts of an occurrence that will shade the whole story by it unawares.

5. Persistent energy in the face of the genius and eloquence will bear its fruit in due season if properly directed, but endless travel in the wrong direction will never reach the place of destination; therefore, of all things, be safe in your theory and start out equipped for a trial of hardship. Chas. S. May, of Kalamazoo, Mich., says:

"The best trial rule I can think of is for the advocate first to possess himself thoroughly of the facts

of his case, and to believe in its justice; and then to keep in mind in every step of its progress that the jury is composed of men representing the average common sense, and moral sense of the people, actuated by an honest desire to do impartial justice between the parties; and so, in the light of this fact, to be able to see how every proposition or objection, piece of testimony, remark at the bar or observation from the bench would be likely to affect such a body; in other words, for the trial lawyer to imagine himself in the jury box, with their purposes and intelligence, and think how these things would be apt to influence him."

OUTSIDE PRESSURE.

WHILE the earliest reasoners used fables and allegories, the latest employ all the arts of argument in the one method of claiming to be in the majority. Public popularity is invoked to win with.

That the greatest body of men ever called to decide a given question should be governed by this reason is shown in the verdict of the famous electoral commission, and the recent Ohio Scott liquor law discussion; for what other reason could govern such eminent and learned tribunals than a desire to be with their party and sustain its arguments?

It is not so certain to-day that important questions are even so elaborately argued as they were in the primitive stages of our country's history, but it is a solemn fact that with a community set for or against

a case, the result will either be like the verdict of that community or a spiteful disagreement.

It is not a time when men are aroused like the listeners to Mark Antony's funeral oration, or Cicero's appeal for Gavius, where a few well chosen words created a radical change of sentiment. Men were then moved by simple reasons, now they are their own judges of the results of verdicts.

Following in this modern line of argument were the great trials of McFarland-Richardson, the Sickles-Key, Newland-Evans, and the Buford-Elliot cases, that were all decided in accord with public opinion and outside pressure.

But a few exceptions like Webster-Parkman and Beecher-Tilton trials, varied a little from this general rule; with the ablest efforts of the great advocate, Wm. H. Seward, failed to bend the custom in the case of the demented negro whom he defended. Public opinion insisted upon his conviction, and the opinion was enforced—even with a brain so deceased that it parted like earth at the touch of the post-mortem examiner's knife.

That public opinion will yield to persistent argument was shown in the Buford case named, where the feeling that would once have lynched him became a sentiment of sympathy and compassion later on in the contest. A more radical change of feeling has seldom been recorded than the release of this slayer of " The Mountain King."

From these brief references, it will appear quite vital to success in argument, that every person charged with an offense at law should be tried by an impartial jury, in an unbiased community, and by

counsel who can comprehend the use of weapons that secure fair play and even-handed justice; for without these advantages no honest victory is probable. It is not the rumor of the populace nor on the evidence of enemies, nor where truth is perverted, that a jury should weigh testimony and arrive at a just verdict, but by an unbiased and independent judgment.

CONDUCT IN COURT.

I NEVER knew but one man in court who quite filled all expectations as to what a lawyer should do before a jury, and that man is no longer with the minority; full of honor and the idol of many admirers, he has passed to his reward, which I hope is as beautiful as his career was brilliant.

It was in June, 1873, that I chanced to hear and see him, and I shall not soon forget the lasting impression. He was of medium size, five feet nine in height, weighing, say one hundred and sixty-five pounds; very erect, warm face smoothly shaven, a small beard on the chin; large head nearly bald, with long, thin, silver-gray hair worn much like an Englishman. His tone was deep and thrilling. His arms and hands moved gracefully, yet with an earnest, rugged grace all unstudied. His whole manner was respectful, eloquent, sublime.

He was an ideal advocate. Voice better than Carpenter's, sentences more thrilling, bearing more dignified. Not so learned as Evarts, not so strong

as Webster, not so brilliant as Brady, but a strong combination of all their general qualities woven into one great lawyer.

I see him now as he sat near a young, beardless junior, taking notes rapidly, when an opposing counsel objected too often, and the court rebuked it. Rising in a respectful way, he said: "I *thank* your honor." The melody of his voice was beautiful. Once more I hear a point made by counsel: "What we insist is, that there is no evidence of marriage." Instantly he is alert! Commencing slowly, while rising to his feet, he said: "Evidence of marriage! What is evidence of marriage? Why living together, may it please your honor. Cohabiting together, may it please your honor! Introducing each other as husband and wife, raising up children together, may it please your honor! For all these relations they were married! Aye! that going down into the very valley and shadow of death that a woman assumes in such relations; they were married! They were married when he enjoyed the bloom of her youth and her heart's loving tenderness—married when it flattered his vanity to enjoy her beauty; but when we come to that other time, when of all times marriage is most sacred, when they should be leading each other down the western slope of life's steep hillside, to rest together at the foot, *in long repose*, then it is that this demon of inhumanity seeks *to cast her off!* and jeopardize her womanhood!—*bastardize her children!*"

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He had been growing taller every sentence. He had walked close up to the judge's bench. His eyes

flashed fire. His voice, and hands, and arms, and tones and gestures all grew eloquent. Few actors ever equalled, none could excel it. It was grand!

This was William A. Beach in the Brinkly case, where he won a verdict and a vindication for his client, by $15,000 damages.

BREVITY AS AN ART.

BILLINGS says "When you strike ile, stop boring; many a man has bored klean thru and let the ile run out at the bottom." This alone would be a law lecture, but follow it a moment. What is gained by explaining when the truth is made evident? The ancient king, who offered a prisoner his life for answering seven questions, was delighted with the beauty and brevity of each answer: "What kind of fish have their eyes nearest together?" was the first, when instantly came the answer, "the smallest," and so on with the seven. Everything is clearer by brevity if it is clear at all.

Brevity is a fine art in court. It is a jewel in practice. The interest of a tersely told story is continuous. The late Darwin Hughes was a master of clearness. He had a faculty of making one see his opponent's theory in its weakest light, by showing how poorly his positions were matched by the evidence, and how contrary to reason would be an answer to his argument. Some would mistake his earnestness for severity. No one could find him joking during trial hours. Law to him was serious business, an

exact science, with very little room for levity and that never indulged in on duty. He would begin with a witness, if important, with his age, residence, and business; and pass directly to their knowlede of facts and circumstances, and like husking an ear of corn, in the presence of the jury, show the ear free from silk or stalk, and group separate branches of testimony into strong combinations. This is an instance: A rich man had left a strange will, allowing his children $200 a month; the widow a handsome sum, and variously disposed of the balance. It was his purpose to show the mental capacity of the decedent and the righteousness of the will. He called the decedent's sister, who detailed, step by step, how he had acquired his vast fortune, how he managed it, how the sons were spendthrifts, giving their queer mental natures, ending with facts to question their well-balanced judgment, when suddenly one of the boys drew a revolver and made a pass to shoot the senior counsel. He was taken in charge safely, and Mr. Hughes remarked in closing: "Nothing could be clearer that the father regarded his helpless sons with great tenderness in extending this protection of an annuity instead of a fortune, in their evident condition." He rested with this thought and won a disagreement, amounting to a substantial victory, for the widow took the lion's share of the rich man's possessions.

SHARP POINTS OF EVIDENCE.

WITNESSES who argue testimony, and counsel who go over their ground too often, are alike distrusted. It is fair to assume that good evidence needs but little argument even by counsel, and none by witnesses. Men who have fine teams, or fine wheat or wool, or apples to dispose of, usually let the articles tell their own story.

Arguments are weakening when they are not needed. The more you urge some facts the weaker they seem, but left alone, like a good joke they would be their own best explanation. Men will not believe impossible or unreasonable things, even if forty witnesses testify to their having happened.

The stopping place is on the very summit of fact. Let it rest there. Let it require just a little genius to discover it. Do not assume that a jury are all sleepers; some are keen witted and will re-open the case in their jury-room. But if you go over the ground too often, how can they? Halt on the very top of victory; rest with it as a climax.

The cheap wit of playing smart with witnesses and trying to entrap them to please an audience is all lost. Vulgar jokes are utterly useless. The bar-room trials are nearly all over, and one who attempts the old time practices, is behind the age, and losing in business. This is the era of *evidence.*

If you have any doubt on this topic, ask any of the panel, after you are defeated, and you will learn that the jury took sides against your client for some pique at counsel or lack of clear evidence. You will do well to consider that the other side may have many

friends on the jury, and they will be listened to in the consulting room. If you have right and justice, and have made it clear, you will be duly credited accordingly.

Over cross-examination is where very many fail in practice; they want to show off. Of course, if one swears that he saw green grass when the deep snow must have covered it, you can cover him with blushes without effort. If men swear from motive it is well to show it, but the instant it appears let it stand like a house plant in the parlor window—don't meddle with it and kill it.

The average mind will cling to only one opinion at a time, and to fill a jury with abuse of counsel or abuse witnesses, is to endanger the verdict. Cases are often measured by counsel—if fair or unfair, good or bad, it will show by abuses, or native kindness—the last wins on a jury unawares.

"Other things being equal," says J. B. Moore, of Lapeer, a man of rare tact in a court room, "the man who is clearest and kindest *and most thoroughly* prepared will win oftenest."

Hon. L. D. Norris, of state reputate as an advocate, adds this terse and striking trial rule, which is full of force and meaning: "Never cross-examine at large! Cases are lost rather by too much than too little cross-examination."

THE STRONGEST REASON.

HUMAN nature responds best to human reason. What you would have done is what a jury would have done. "I may be amiss in my feeling," said Judge Ryan once, in Milwaukee, "but had that "child been a child of mine, this trial would have "never happened! There might have been a trial "for murder! Had that man even so much as "looked his villainy at *my child* and—by heavens I "would brain him as soon as I would a mad dog! "and so would *you* and *you* and *you* and all of "*you*;"—and instantly the jury took sides with the speaker.

But this was an extreme case, and human nature was roused at the recital. In all ordinary cases the strongest reasons are given without passion. Even in the Ryan matter his highly heated words led to a disagreement and a final acquittal. Momentary fights are not the surest in a great contest. Evarts and O'Connor were always mindful of their effect on the verdict.

Like begets like, but it must rest beyond removal by counter evidence. The counsel who shows his claim to a jury like Joseph H. Choate does, by lucid explanation, is surer of their judgment than even one like his eminent predecessor would be were he living; not that one is greater than the other, but he is abreast of the latest methods of dealing with doubtful cases.

It is useless to expect a jury to share the full prejudices of both litigants. They will divide the difference. Too great personal appeal may make them

distrustful, too little will endanger your reaching their best judgment, for *men act best when their interest is aroused.*

One rule of all should govern an argument: Show the jury your claim in candor, kindess, earnestness; show that you believe it; show that you have proven it; show in statement that you deserve all you ask; then mould by reason the clay of testimony into the marble of belief, chisel it to the line of equity, compare it with justice, and leave it like an undraped statue.

I cannot better conclude this article than by quoting rule ten of "Trial Rules" in "Trial Practice." It cannot be too often repeated:

"There is no opportunity better than the earliest. Let the jury know from the beginning that you believe in your rights and will fairly enforce them while their minds are as clear as white paper; *write it on their hearts and engrave it on their boncs,* that your client has the right you contend for and will ask for none other, but insist upon justice. On this be so full, so determined, so fortified with law and reasonable evidence that it will stand like a rock on a mountain, unshaken by either quibbles or appeals."

WHAT IS VICTORY?

I REMEMBER hearing a plain man tell a clear truth once that is impressive from its very simplicity: "One had better be cheated while young, it don't cost so much" He said it of his boy's poor trade in pocket knives, but it applies just as well in law suits. One had better lose a case early enough to open his eyes well and avoid such defeat when there is more money in the contest. For this reason, self-reliance will be an excellent exercise in court practice; one will learn more in a single trial that he wins or loses alone than in many cases with counsel. For proof of this, ask your own experience.

The emergency that brings out latent talent, if a man has it at all, is a powerful means of creating confidence. It will lead him to stand alone, to overcome trifles, to demand a verdict, to rely on human nature and oral argument, with good evidence and apt law to win many more victories.

The very best victories may be hidden by temporary defeat. The longer litigation may increase your chances and multiply your recovery. If the case has been won on some trifle it will be overturned in a higher court and win itself, almost, when the supreme bench is through with it. It is no time to flinch at a small failure. Fifty per cent. of contested trials are tried more than once, and next time it will be the recent loser's turn for victory.

Try the early cases alone; try them with energy; try them with warm sympathies; try them with fair means and good evidence; win them without snap judgments; win them without begging a verdict,

demand it; be in the right and dare to sustain it; be so reasonable that you can demand it; throw away the trifles; weigh your proof beforehand; see that you are satisfied with it, if not, how dare you hope for victory? The finest law work ever done was the clearest; the best argument is the simplest. The true victory after all, is the honest verdict of a fairly tried, well-managed contest, one in which neither adversary nor court nor jury have been fooled, flattered, or over-reached, but when all has been shown as in mid-day sunlight and the core of the controversy explained, has led to a just judgment. All this is simple, is it? See how it is in actual experience!

TRIAL ELOQUENCE.*

STATEMENT AND CONCLUSION.

JOHN VAN ARMAN'S opening and closing words in the second trial of Vanderpool are intensely impressive:

"None of us can understand this case but the one in danger. We cannot rid ourselves of a coolness in the concern of another. But *one* man has felt already the chill and darkness of that dread place which your verdict, if unfavorable, will consign him.

"A year ago and his condition was as fair as yours. He was not rich, but riches are not needed to be happy. He had his home and the respect of

*Condensed from Modern Jury Trials.

his neighbors; what more could he desire? On a sudden, in the midst of fair prospects, his once quiet town resounds with the wild cry, 'Vanderpool has murdered Herbert Field!'

"He was tried, not by a jury, but by the populace. He was hurried to prison. His wife turned from home in the bitterness of desolation, in the depth of despair. You have heard the question, where is Field? If I could, I would gladly call him back from his untimely grave and bid him, with his cold blue lips, reveal this dreadful mystery."

* * * * * * * * * *

CONCLUSION.

"If he is convicted and that conviction is wrong, and sometime hence it should be found that after all, he is innocent, and in consequence of this terrible doom, that you have inflicted upon him, reason should have tottered on her throne, and from being a bright young man in the flower of his usefulness, he should become a raving, driveling idiot, and that wife whose sorrowful face has looked to your eyes for the last four weeks, had gone down, heart-broken, to an early grave, it will not be a *twelfth* part of this weight that each of you shall bear, but to *you* and to *you* and to each of you will come this crushing weight upon your conscience, in your slumber and in your waking hours, preserved to the day of your death, to upbraid you with a sense of its dreadful wrong! But I solemnly believe when you do your duty, and give him the full benefit of the doubt which these strange circumstances of this mysterious case have left to us all—and I beg of you to do

it—you will acquit him! and when you stand for judgment on your own account, the deed will smile by your side, and, like an angel, plead trumpet-tongued for your acquittal and deliverance.

THE EFFECT OF A VERDICT.

It is too often taken for granted that the jury know in advance the limit of a sentence and the degree of a crime. This is a wrong conclusion. Nine-tenths of the average jurymen could not define the meanning of either Arson, Larceny, Robbery, Manslaughter or Homicide, in terms required by the common law. To such men the best argument is a clear explanation of the crime and its consequences, or if it be a civil case, the measure of damages.

I think I hear some one say, "of course, we all know that." But do you practice it? Many things that we know are lost if not put in practice. We could all leap over fences in boyhood, but how many retain their springs through manhood? Men educated late in Life, like Lincoln, Schurz and Giddings, have all their learning at their finger ends, but jurymen have passed beyond middle age, and may have forgotten first principles.

The habit of averaging a verdict is one of daily occurrence. One juror will say: "Let's recommend him to the mercy of the court," and the rest, to be relieved of a dull duty, will consent. The judge may not have any mercy, and the prisoner's rights are sacrificed. Another says: "The judge will be

light on him—it is a first offense," when the offense is burglary and calls for almost murder's sentence.

In civil cases there may arise the question of "no demand," as in trover and replevin, and this fact, if kept back until after argument, leads the jury to hesitate long on reaching a verdict. I know a case where several hundred dollars in goods hung on a single special question which the jury feared to answer lest it should result adversely, and they disagreed, resulting in a mis-trial and serious loss to plaintiff.

The statement and argument of either civil or criminal cases should begin with the plainest and least disputed matters. This will more readily secure attention and flatter the judgment of an opponent. Certainly to concede something is to gain that much of an adversary's confidence, for insomuch as our enemy agrees with us we are not enemies. It is like a heavy load started which moves more easily. With attention and sanction, your reasoning is more patiently followed.

You are sure you have a contest somewhere, but approach it with such gradual firmness that with earnestness and caution you can pass it in confidence. A little hurry at this point may be fatal. Dwell upon it by facts, by figures, by humor, by illustration, by reason, by belief in the positions taken, until you are convinced and feel that a majority are with you in the sensible conclusions of your argument,—till you see it in their eyes and faces, and every motion of their muscles.

All of the appeals to their sympathy will be useless, if made without foundation. You will not need

to make an appeal unless it grows out of the circumstances that the jury have considered, something that warrants sympathy. If such a time should come, use it but once and then reluctantly; let it grow out of something in sight of the jury or something directly in point that will apply without explaining. Men are always ready to reason through incidents, stories and illustrations, that come in the nature of surprises. See that they apply directly, that the jury see the point clearly, then rest.

SKILL IN TRIALS.

THE STORY OF THREE STRANGE TRIALS.

In the year 1859 two young bankers started business in a small lumber district in Northern Michigan, and succeeded finely for nearly a year. One had experience and $700, the other invested $7,000 and a good social standing. But their qualities did not harmonize and they dissolved partnership one bright September day and signed articles of settlement, which were witnessed on Sunday at nearly noon.

This bank was a frame building, near the lake, on Main street. Both were seen to enter alone after settlement, but only one was ever seen alive again. The first thing that attracted suspicion was the absence of the younger and richer partner, whose natural disposition was to hunt and roam about, and but little was at first noted. The older partner was early in the bank on Monday burning some clothing and most of the carpet, and scrubbed out a bloody sub-

stance at the rear door. Blood was seen on the back steps leading to the water. When questioned, the senior partner gave a poor account of himself, and was arrested. Excitement ran high, and *once* men wanted to lynch him for murder.

He was held in jail, and while there made many cross-statements. He pricked a pin-letter, detailing how the murder was committed by two sailors; forged names to it, and attempted to mail it by his wife's aid, who remained in the jail near him during his detention. This was the most damaging evidence against him; even more than the blood stains and burned carpet, which told suspicious stories of foul play and attempted concealment. The blood stains were explained as from nose bleed. The carpet burning was called a new start; a cleaning out. The forged entries in the books from $700 to $1,700 were not explained. The concealed coin found in his home was said to be a guard during the delay of trial; the pin letter to ward off the mob and gain time. All these defences appeared by adroit management on trial, yet he was convicted and sentenced to a life imprisonment.

By an old statute allowing five days in term time before sentence, to apply for a new trial, he was granted that favor from the fact of his conviction and sentence being on the last day of the term. The fact of so much feeling added another to his accidental victories. A change of venue was granted, and able Chicago, Detroit and Grand Rapids counsel engaged in his defense. These men used the same explanations and two more. First, by an ingenious time table, they showed how impossible it

was to do so many acts—sink the body, carry it to the water, anchor it, have it get twelve miles down the river where found—and be at home nearly every moment of the afternoon and evening, as shown by two witnesses. Powerful arguments followed and the jury divided nearly half and half.

On the third trial less interest was manifested. The wife's devotion began to tell in favor of her accused husband. A wealthy lumber dealer furnished counsel and created sentiment, by announcing that he had enlisted for life with all his money in the contest. Counsel urged that it was a question of time merely when the real murderers should be unearthed. The bearing of accused seemed harmless; two trials had miscarried; court costs were increasing; a captain was found who had seen a half-starved tramp floating in a white boat, with a large roll of bills, seeking his way to Canada; a white boat had been seen going down stream on the night of the murder, towards the place where the body was found, with a hatchet scar on the head corresponding with a hatchet kept in the bank. The circumstances grew more and more bewildering, and, with superb tact of counsel were made to tell in defendant's favor, and strange to say, he was acquitted! Is there any greater court victory of skill in management?

This is the story of the three trials of Vanderpool, as related by John Van Arman, senior counsel for the prisoner, who regretted not having had the first chance to frame the theory of the defense, but found the old statute and gained the new trial. On what a slender thread does human liberty often hang!

TRYING HARD CASES.

OLD attorneys suffer very little from failure to win bad cases. Young men can stand but few failures. The public will find out soon enough whether you win or lose lawsuits, and rank you accordingly.

Young men are naturally distrusted. A name for losing cases will be fatal if long continued. Chief Justice Ryan of Wisconsin—long the peer of Matt Carpenter—sifted his cases with greatest care and caution, and, although bold and daring in a court room, he was timid about starting a doubtful lawsuit from his office.

To start well is a half won victory. You cannot afford to enter a race without feeling that your harness and outfit are alike trusty and the bridges you have to cross are reliable. Train conductors and engineers are very mindful of such precautions. Hear them trying the wheels at every station! Mark how they tested and tried the iron cables in the Brooklyn bridge to make sure of their quality!

No man ever laid more stress on this point than Charles O'Connor. His researches were marvelous; his prosecution of the Tweed ring, of the Forest divorce case, were matters of life and death struggle as it were; he won them when matched by prejudices and by millions. He was so grounded in right as to command and demand a victory.

General Porter's prosecution of Guitteau was a giant undertaking. Tried by interruptions, beset by every effort to break in on the harmony and connection of his theories, he bore himself like an athlete in

an arena with a mad hyena at his back, and a band of wolves all around him.

Law practice is strangely varied from civil to criminal. In the first there is no reason for settlement, in the last there should be no room for contention. The law is a serious method of reaching a conclusion that men are unable, or think they are, to reach without it, but a true lawyer should stand as a wall of adamant between his client and fruitless litigation.

CROSS-EXAMINATION.

EX-GOV. DAVIS, of St. Paul sends the following excellent rules:

1. Discount by at least twenty-five per cent. what your client says he himself will swear to.

2. Do as little cross-examining as possible. Never, on cross-examination, ask a question when you do not know what the answer must be if the witness is honest; and, if he is a liar, don't ask the question unless you are ready to ruin him with a contradiction by facts in evidence or by other witnesses. I have seen more good cases ruined by cross-examination, by the lawyer who ought to have suppressed his curiosity or vanity, than by any other cause.

3. Never misstate or overstate testimony to a jury, in summing up. You will always be detected by some juror and he will resent your attempt to "play him for a fool."

ABLE ADVICE.*

From Judge C. I. Walker, of Detroit, to Ann Arbor law students:

"For myself, I am a firm believer and admirer of the common place. I like common place things; I revere common place men; I am instructed by common place thought. I like common place things because they are most useful, the most needful to our happiness; because they are the most beautiful.

"I revere common place men, because they are doing by far the most for the well being of our common race. In almost every department of human effort the great work of the world is being done by ordinary men, and this not merely in the department of physical labor. In teaching, both in the home and in the schools, in the learned professions, in literature, in science, in art, in commerce, in government, in morals, in religion, and wherever else there is a call for earnest labor and noble effort—for the active exercise of the intellectual and moral faculties with which God has endowed us, ordinary men and women are, to a great extent doing the work upon which the welfare and progress of society depend, and are gaining the rewards of such work, solid and otherwise.

BE HUMBLE.

"It is a noble thing for a man to say to himself: 'I am not at all what I vainly fancied myself; my mark is far, very far lower than I had thought it had been; I had fancied myself a great genius, but I find

* As an authority on these topics no man ranks higher in Ann Arbor University than Judge Walker.

myself only a man of decent ability; I had fancied myself a man of great weight in the country, but I find I have very little influence indeed; I had fancied that my stature was six feet four, but I find I am only five feet two; I had fancied that in such competition I never could be beaten, but in truth I have been sadly beaten; I had fancied that my master had entrusted me with ten talents, but I find I have no more than one. But I will accept the humble level which is mine by right, and not try to detract from the standing of men who are cleverer, more eminent, or taller than myself. I will heartily wish them well.' * * *

"In your intercourse with clients act with great caution upon the statements that they themselves make. Sift those statements carefully; cross examine your clients as to the facts, and be careful to ascertain not only what they deem the facts of their case to be, but what they can *prove* them to be. Some clients are stupid, and some are not disposed to be frank with their own counsel. If opinions are rashly given upon the partial and imperfect statements of clients, it will often be found that though the opinion upon the facts stated was sound, yet that some fact not stated changes the whole character of the case, and defects the action or the defense, and the lawyer often bears the responsibility of an error that should rest with the client.

"Let your intercourse with the members of the bar be marked by the most perfect good faith, professional courtesy, and true self-respect. This is easily said, but not always easily accomplished. You will not always receive such treatment from mem-

bers of the bar; and in the heat of the conflicts that take place at the bar, it requires more than ordinary self-control to abstain from that which we may thereafter regret. But it is of the utmost consequence to every lawyer, and especially of every young lawyer, that he obtain the respect, confidence and good will of the profession. The profession must ultimately settle his position at the bar. Their verdict will be final. Few things so undermine a man's position at the bar, as to be guilty of sharp practice with his brethren of the profession. No high-minded man will be guilty of it, and no man can ultimately sustain himself in such a course. When associated with others in the trial of a cause, show your readiness to do your full share of the work. Some lawyers throw the work to be done upon their associates, and seek to share only the fees and the glory.

The trial of a case of complicated facts in law, at the circuit, is a much severer test of a man's power, than the arguing of a case in the supreme court. In the latter case there is usually ample time for preparation, patient research, and careful thought, that will enable a man of culture, discipline, and fair legal reading, to make a good argument, and do justice to his subject. But at a *nisi prius* trial, events follow each other in rapid succession, and a lawyer should have perfect command of every faculty of his mind. He must, with an eagle eye, discover the weak points of his own case and those of his adversary, and skillfully cover the one and expose the other. He must make and meet objections to testimony, entirely unanticipated, and argue them—a trying test of his knowledge of the principles of evidence. He

must be prepared for unexpected testimony, attacking the strongholds of his case, and his ingenuity is put to the test to parry those attacks, and avoid their force, or boldly to meet and overcome them. As the case progresses, and while upon the alert in putting in and meeting the testimony, he must be deciding in his own mind, upon what principle of law he must rest his cause, or his defense, and shape his requests to charge.

"Previous preparation and study is of great consequence here, but still the exigencies of the case often compel the lawyer to change his ground. As the testimony comes in piece by piece, in disorderly confusion, he must be revolving in his mind how he is to make the most of the important evidence in his favor, and how adroitly and with what logical skill he can make a fact apparently against him, tell directly in his favor; and during all this he should be forming the order of his argument, arranging and filling up its framework. And then immediately upon the close of the evidence, while flushed with the hopes of success, or depressed with the expectations of defeat, without time to arrange his thoughts, he is called upon to argue the cause. The court is to be addressed upon the law, and a particular charge requested. The jury are to be addressed upon the facts. All this requires intellectual skill and training as well as mere power. And the man who proposes to succeed must give himself up with a hearty enthusiasm to his profession. And he who does that, if possessed of good sense, fair ability, and is content to give his days and nights to toil, may gain honorable distinction at the bar."

READY LAWYERS.

READY lawyers learn to express plain facts in plain words. They will learn from carpenters about buildings, farmers about farming, merchants about business, and of each class about the facts in the line of their own study.

Plain men have been the best teachers, inventors, reformers and leaders of great measures. They are the best witnesses, the best jurors, the best lawyers, and even the best judges.

To be a ready lawyer one will need to have law terms well committed—to know the clear names of civil actions and criminal offenses with the gist of evidence required to sustain each, and the best theory of defense followed by able men in like cases.

The statutes of one's state and the higher court decisions should be familiar books easily reached and readily referred to on any subject; convenient at hand, forms and good material to make papers, deeds or contracts.

But office readiness is only half the battle. Five more rules of conduct will prevent errors and surprises: Before trial

1. Find if the client has a case and see that he *can prove it*—then *start right*, and if already wrong, stop and start again.

2. Note names and addresses, with facts each witness can swear to, and see that his story is consistent and truthful. Brief his facts pointedly. Do so with all testimony.

3. Make the same brief of law points with the gist

of cases and pages, so that on facts and law there will be no confusion.

4. See that some one will bring in witnesses without fail, and in a classified order. Check what is proved as you go, and omit nothing.

5. Brief the statements and heads of argument in such order as will prompt a ready address on your chosen theory. By this precaution you go like a trained general into battle, and will be ready for your adversary.

During trial state facts with clearness, directness, and interest, never with dullness. Present proof with fairness, enforce it by grouping the similar facts together, impress it by candid and earnest argument. Consider that the smartest of smartness is to see the right stopping place and end on the summit.

Object as little as possible. Depend upon your own evidence rather than expect to make the other side prove your case. Think clear through the trial, and keep up that line till the case is ended. Think of it in advance, in the middle, and until the last step has been taken. In the eyes of a just jury every act has its influence. If you are confused they may well be confounded. If you are clear, their duty is lessened.

FIVE FACTS FOR TRIALS.

1. BRIEF facts and law in *their order*, in terse pocket form, enough to sustain your case and in shape to take in at a glance during the hurry of a trial.

2. Below your points place all the enemy must do to make *his* case, and watch what he lacks to the very end.

3. Make brief of evidence with names, dates and facts, that greatly helps in questioning. Stop not until each point is put in proof. Have it done in an orderly manner.

4. See and *drill* witnesses to tell the truth in plain words and not from a roundabout hearsay style. Tell them why hearsay is not evidence, and when it is proper.

5. Make points of your address to the jury in bold hand—head notes only, for ready work. Watch your exceptions and make ready for the next higher court, where errors are corrected or legalized. Do this with all the skill your genius and tact can command.

TWENTY-ONE RULES OF PRACTICE.*

BOOK knowledge of law is like a chest of fine tools in the hands of an unskilled artisan—useful, but impractical, without experience. Practice in law must be largely learned from contests in courts. It is the lawyer's trade; the more he has of good practice, the better he will know how to apply his learning.

*From "Modern Jury Trials."

To have the keen tools, and the well learned trade, both at command, may make him an accomplished workman. No arbitrary rules of study can be laid down, as few follow the whole field of law, and more adopt some specialty, and read accordingly. From observation, practice, reading, attendance at courts, in different states, and counsel with able attorneys, the following rules, with reasons, are given as aids and suggestions in general practice.

The general rules of practice may be confined to twenty-one, and by careful attention to each, great advantage will be gained over a hap-hazard method of trials, without any fixed purpose in examination of witnesses or argument to a jury. They may lead to winning five extra cases a year.

RULE I.

Study every case by itself, thoroughly, and make a clear brief on both law and evidence.

No musician will undertake to execute new and difficult music before a public audience without knowing what it is, and how it sounds; he will drill on every note until he masters each inflection. Actors rehearse before every play. Horses are scored, trained and practiced before every race. Boxers, wrestlers, racers, walkers and boatmen never start off-handed. It has been told again and again, that the best trained athletes were most likely to win; why should lawyers be an exception?

A lawyer in court without a brief is like a captain at sea without his chart; a driver without a tried horse; a marksman with an unknown gun. But one

with a well mastered case is strong in every emergency; indeed his victory is over half accomplished.

RULE II.

Know what each witness will swear to, separately and together.

It often happens that, in criminal cases and family quarrels, witnesses are separated after the manner of the well known trial of Susannah and the Elders, given in the Bible, where, on the first hearing, with witnesses all present, it was shown that Susannah was guilty, but when all the witnesses were excluded except the person testifying. two material points crossed each other: the one Elder swore to an offense under the olive tree, and the other one to the same offense under the mulberry tree!—each on the opposite sides of the garden! Susannah went free, while her accusers were executed.

Show each witness *the importance of candor;* of holding to the truth, and talking in a reasonable manner, with facts and circumstances so woven together as to secure confidence I remember an assault case, where an eye was put out with a poker, made from a shovel handle. In the doctors statement of why he knew it was that way, (instead of a fall on the zinc platform, as claimed by defendant), he showed that the soot in the wound from the poker appeared like butter cut with a rusty knife, which convinced him, and it convinced the jury, who gave heavy damages to the plaintiff.

RULE III.

Open the case fully before any evidence is in.

Whether the plaintiff or the defendant, the claim should be known, and fastened in the minds of the jury, from the start. If for the plaintiff a careless half heedless statement is made, little importance will be attached to the suit until it opens itself, as it were, and in such cases, juries often take an early prejudice that requires a great amount of evidence to remove. It is therefore very essential to success, that a terse, clear and forcible opening be made, and one that is comprehensive and interesting to a jury.

Especially is this true in criminal defenses, where, by an even start, the jury may carry a favorable impression of facts in the prisoner's favor, that will come with double weight if opened early in the trial. Experience shows that little is ever gained by a smothered defense. The people's side is of course well known. The defendant, if brought in fresh from the jail, comes under a cloud; suspicion is cast upon him by the mere force of circumstances, and many believe prisoners guilty simply because they are under arrest. It is of the utmost importance that not one word of evidence be heard in such cases before a full, earnest and candid opening is made for the defendant. Courts always permit it, and often encourage it. This style of opening has a double advantage of allowing counsel to tell the worst that is likely to be established against the defendant, with his answer thereto; creating an impression that, even

with such damaging circumstances, the prisoner is not guilty. It is not the duty of defending lawyers, however conscientious, to convict their clients; such is the province of a jury, and, if ever so guilty, the counsel for defense does his whole duty to present his client's case in a clear, convincing way, that, with the people's side equally well managed, the jury may reach a decision based on the law and evidence, fully, clearly and evenly explained. An exception to this general rule will be in cases where the defense is made wholly from the weakness of the plaintiff's evidence, or from cross-examination.

RULE IV.

Be forcible, firm, dignified and clear.

A jury will not be long in reading between the lines, if counsel lacks force and earnestness of manner, and an interest in his client For days and months, both parties to the suit may have carried their legal trouble at home, and at work, like a leaden load, dreamed of it nights, and pondered over it hours together, until their heads would ache with anxiety. To such, a tame or wavering presentation of their side of a suit is more than human nature can endure, and is sure to lose a client, if not the case on trial.

A firm and dignified bearing will be impressive alike to court and jury, and add respect for your argument that never comes of "shilly-shally," and frivolous statements. The business of lawsuits is to adjust differences, protect the helpless, enforce rights, and punish wrong-doers—it is serious business. But

above all, says an old attorney, *be clear*. Many jurors are ignorant of big words; they do not comprehend the real issue to be decided; some understand English imperfectly, others reason in a slow, round-about way, and reach conclusions after a long study and much meditation. Witnesses may be confused by a lack of clearness. It is a good plan to see some experienced juryman, early after a trial, for a few trials at least, and say, how was the case presented? In nine out of ten cases he will say, you ought to have made this or that point a little plainer. The jury did not understand it fully.

RULE V.

Never be bluffed out of Court, but do not begin the bluff.

Once in court stay in, and be an opponent, as Shakespeare well describes through Polonious: "Beware of entrance to a quarrel, but being in, bear it that the opposer may beware of thee!"

Some men will fight all the better by being thrown down a pair of stairs; some take to the woods at the first sight of the battle. Clients, suitors, juries and spectators like a man who can stand in an emergency. A sudden turn in a suit—a new point sprung upon the trial—an enemy from the flank—should draw out the resources of an advocate; and happy the man who is equal to such occasions. If equal, he is marked and remembered long afterwards; but to secure this victory one should be very guarded not to begin the assault, for the vanquished assaulter is always doubly defeated and humiliated. Great lawyers seldom stoop to petty advantages.

RULE VI.

Brevity of facts, terseness of statements, tell best.

Only one lawyer, since Rufus Choate, has succeeded by lengthy sentences, as an advocate before juries—Mr. Evarts—and his happiest efforts are given in less elaborate style than is his usual custom. Men like Col. Ingersoll, who cut up their statements *in little stars*, are followed with greater interest.

In the jury room, after the court charge, when twelve men contend for a verdict, will be often heard such little old sayings as, "The laborer is worthy of his hire"—"They don't make thieves out of that kind of men"—"It takes two to make a bargain"—"Who began it?"—"It served him right"—"Put yourself in his place"—"Give him another chance"—"How many men would do differently?"—"No man becomes suddenly vile." These are not forgotten.

RULE VII.

Never allow yourself to switch off—"Kill the squirrel."

A trite old saying is, "Stick to your text." In a lawsuit many things happen to try one's patience; witty retorts, stingy replies, low personalities, may so engage counsel and jury as to smother and obscure the case. Jurors take sides, and lawyers that grow personal, and enter into outside discussions, will lead a jury in the same direction. The real winner, after all, is one that, with singleness of purpose, holds to his point, and hugs the issue to the end. *Harper's Weekly* gave an excellent story of a lawyer selecting

a clerk, that applies to this point admirably. The lawyer put a notice in an evening paper, saying he would pay a small stipend to an active office clerk. The next morning his office was crowded with applicants—all bright, and many suitable. He bade them wait in a room till all should arrive, and then ranged them in a row and said he would tell a story, and note the comments of the boys, and judge from that whom he would engage.

"A certain farmer," began the lawyer, "was troubled with a red squirrel, that got in through a hole in his barn, and stole his seed corn; he resolved to kill that squirrel at the first opportunity. Seeing him go in at the hole one noon, he took his shotgun and fired away; the first shot set the barn on fire."

"Did the barn burn?" said one of the boys.

The lawyer, without answer, continued: "And seeing the barn on fire, the farmer seized a pail of water, and ran in to put it out."

"Did he put it out?" said another.

"As he passed inside, the door shut to, and the barn was soon in full flames. When the hired girl rushed out with more water—"

"Did they all burn up?" said another boy.

The lawyer went on, without answer—"Then the old lady came out, and all was noise and confusion, and everybody was trying to put out the fire."

"Did anyone burn up?" said another

The lawyer, hardly able to restrain his laughter, said: "There, there, that will do; you have all shown great interest in the story;" but observing one little

bright-eyed fellow in deep silence, he said: "Now, my little man, what have you to say?"

The little fellow blushed, grew uneasy, and stammered out, "*I want to know what became of that squirrel! that's what I want to know.*"

"You will do," said the lawyer; "you are my man; you have not been switched off by a confusion and a barn's burning, and hired girls and water pails; you have kept your eye on the squirrel."

A whole chapter is given in this story. It is packed full of excellent advise to beginners, with a few good hints to older counsel. In every suit there is, or should be, one squirrel to kill, and no more.

RULE VIII.

Remember, juries do not know all the facts.

Lawyers appreciate the fact that cases come to office in a vague, uncertain way. The half is not told; that even with several calls and explanations, it is difficult for a counsel to understand the facts of a lawsuit. Think, then, how much more it is to show these facts to twelve new listeners, under the narrow rules of evidence, and to enable men unlearned in the law to reach a correct decision. Is it a wonder that juries blunder? Is it not a wonder that they do so well?

An old lawyer once said, after every defeat in court, "If you could ask the cause, the answer would be, 'Your man had the wrong side, or they didn't understand it.'"

It may be the witnesses are confused, that they do not talk well in their statements. It is better always

to win a suit first in the office. Let each witness be carefully examined and cross-examined, and re-examined, until they know the effect of a halting, unreasonable, untruthful story, and know how much stronger a *fact* is accompanied by a *circumstance*.

Here is a suit over a broken leg in a wrestle. Six men swear it was a friendly wrestle, but the injured man says, "I'll tell you just how it happened. The most of the men were half drunk; it was late in the night; I had been sick; I didn't want to wrestle; he had tried me before; he is too strong and big for me; I shied away from him; then he came up to me again with his thumbs in his vest, and told me he never meant to hurt me; just then, as he got in reach, he grabbed me, so (illustrating), and jerked me, threw me against the billiard table, and broke my leg in two places; I never even clinched with him; then he bent down and said, almost crying, 'I didn't mean to hurt you, Billy; I'll make it all right—I'll pay all it costs you.'" He won, over the six witnesses; he had a fact and an incident. A fact is always stronger and clearer, coupled with a picture of how it happened.

RULE IX.

Show no uneasiness in temporary defeat.

Sometimes a point fails, a branch of a suit falls through. It may not be more than the regiment of an army. It is no time to flinch or show color; it is a time to bring out mettle. At such times Mr. Lincoln is said to have coolly remarked: "We will give them that point; I rekon they were right there." Pro-

ceed with as much coolness as though the value of the loss were less than a shilling. But use the other forces, and see that the whole bottom of the case never falls through a small opening. Good lawyers say that cases they were sure of winning, are often lost, and others that seemed lost in the middle of a trial, turn out splendidly in the end. It is well to have a smooth, unbroken line of evidence, but a sharp, stinging defeat, on one point, and a pithy, incisive argument on the balance of a suit, may make a lasting victory. New trials, frequent reversals and discouraging circumstances, may end in a signal success.

A dry-goods runner was injured in a railroad accident, and sued the company (Grand Trunk Railway), and won a $15,000 verdict. A new trial was granted, and he gained $26,000. A change of venue and one more trial brought him $45,000 damages, which last judgment was *affirmed.* Nothing could be clearer than that impediments to a trial, or setbacks in enforcing a claim, are considered by juries in the final balance arrived at. So it is true, when one contends against odds, juries remember it, and as sure as any mean little advantage is taken in trial, so sure the advantage taker is the loser in the long run, for juries are human, and human nature likes fair play in litigation.

RULE X.

Drop a bad witness—Cross-examine only to gain by it.

To cross-examine a sharp witness is to strengthen his testimony. Frank Moulton, in the Beecher trial,

was always ahead of his examiner. To repeat and repeat often, is to weld and rivet with the jury what has been said, as most witnesses would sooner vary the truth than own to a falsehood. It is only on cases of doubtful identity that cross-examination tells so completely, and then it is dangerous ground. To badger a bad witness, that, like a race horse, gains by every break, is no less risky than playing with hot irons where some one will be burned.

It is better to seem not to need him, and allow it to go half noticed, than intensify a weak point on the witness stand. An exception to the rule is where in a murder on board a steamer, a positive witness knew just how many officers were on board, who they were, and where they were; but on placing each at a certain point, he was confronted by the question, "Who was at the helm?" which so staggered him that he broke down and admitted his blunder,

Another case of identification is where a man called with a forged bill, and took in payment a check for a large sum of money. On direct examination he was sure he knew the prisoner to be the guilty party; but being wound up gradually by the dark or light room, whether he had seen the prisoner before, and finally, if he was as sure as though he *actually knew him;* witness faltered, admitted he *possibly* might be mistaken; that he had some doubt, and at last lacked fully enough of certainty to make a reasonable doubt and release the respondent. This cross-examination should be used with caution, discretion and judgment.

RULE XI.

Make your evidence reach the heart of the case.

Before every trial witnesses should be examined, and never sworn without cause, and held to a strict rule of evidence, until, with truth and candor, they can bring their story to the gist of the action. More witnesses swear around a point, and omit vital and essential elements, than come squarely up to the mark, and make their meaning fully known.

Sometimes a case turns on the *intent*, again on the cause, and often on who was the offender. To know what the core of the case is, and hold it in sight, by the proof is the part of a wise counselor.

RULE XII.

The main point in law is good evidence,

Is an old adage, and one not to be forgotten. Impress both client and witnesses with the fact that a lawyer should know the *good* and *bad* side both, and be prepared to meet either; as scouts are sent out before a battle, so witnesses should be tested before trials. Show them the real issue, and hold them hard on the line of directness. For after all, "Man is a mystery that no other man can solve; we are all spirits in prison, making signals that few can understand."

RULE XIII.

Avoid frivolous objections—Save your forces for the main chance.

Many a lawyer, to be witty or show off, will talk over and work over his ground in small matters, that weary the court, and become stale when needed in the final argument.

An old lawyer (we quote him often), once said, "The worst thing that can happen to a young man is to think he is smart."

Such men grow tricky, captious, and exessively anxious to *show off* on trials. Juries are sure to count the case weak that requires such treatment. It is a mark of vanity to trifle away time on matters that reach only to the husk or chaff of a case, and obscure the kernel by such tactics.

Mr. Lincoln was noted for giving away small points. "We may be wrong on that, your honor," he would say; "I think we were wrong there, but it is not the gist of the matter, anyway." This fair play and liberality always told with a jury, and when he finally said, "Now, this much we may ask, and when I shall state it, it will be a reasonable demand." Then, with all the husk trimmed off, he would state, in a candid way, such a reasonable request that the justice of his demand stood alone and relieved of everything, but a fair just judgment.

RULE XIV.

Speak clearly, carefully and candidly.

Judge Cochrane was one of the most patient and charitable men that ever graced a bench. He would

listen a full hour to a dry, tedious plea without turning in his chair. But he sometimes remarked aside that he knew of lawyers who could talk a full hour and not make one single point. He believed many attorneys talked their cases to death. While a careful explanation is a good argument, a long, drawn out talk without a definite purpose is likely to lead to the belief that the lawyer is trying to persuade men against their better judgment, and this is sure to react on the speaker.

Jurors respect and admire candor, and occasionally relish wit, as it serves to rest and relax their minds for better efforts; but levity continued at any length is, like a variety show, soon forgotten. The speeches, plays, songs and sayings that last, and ring in the ears long after they are uttered—that move the judgment and mold the actions of men, have a sacred tinge, often reaching to the fireside, the home and the tender relations of life. Courts and juries should be impressed with the single thought that you are not inviting them to either a quarrel or a play, but to determine some right, and redress some wrong that you failed to settle otherwise. Aaron Burr's great rule was: *Be terse.* The art of selection, he said, was the greatest human faculty. His arguments were made in half hours, never longer.

RULE XV.

Drop all examinations and arguments in the right place.

When a witness has reached a clear point and a smile follows, per force, leave the point—let it stand like a rock on the mountain side, uncovered and

alone. To stop short will attract attention and rivet the mind to its importance.

All men magnify discoveries, and to leave it as though a keen-sighted man could just see it, and no more, gives him credit for discernment, and relieves his mind of the burden and rubbish that he dislikes to carry.

It is only here and there, like mile posts, that salient points are fixed in the minds of a jury, and each should stand alone in its strength and clearness.

It is the pith of a story to end well. The cream of a joke is in the little things suggested, half discovered, that leads to new-born pleasure. A surprise in evidence should end where the story ends, in a climax that rings like a whip cracker. The same may be said of argument. There is nothing like knowing when to stop. I remember, in a trial where a son and father were parties, at the close of a pathetic paragraph, counsel said: "This should not be. Nearing, as we are, the great holidays when children gather around the fireside and tell over the stories of the past, eat and drink and be merry, in the sweet memory of the long ago; when they talk of the absent, and the loved and lost, this should not be—" And suddenly the father rose up, and with an emotion that no one could mistake, pointed to the judge and said: "Tell the jury to give him all he asks. Stop, say no more!" and counsel, though only a quarter through, was shrewd enough to stop at a winning point.

RULE XVI.

Let judge and jury know you mean what you say.

From the date of receiving a case it should grow on the mind continually. By frequent reviews before the trial, by making additions to briefs, and by earnest study, it should be a case for a near friend, which to lose will cause you pain. Let it be as though you might never have another case, and on this one hung all your reputation as an attorney for life. So charge yourself with it that it will come from every muscle, every gesture, every word, as deeply in earnest. There is no power in persuasion like where one believes what he says, where it breaks down all opposition, and cuts to the hearts of the hearers like the language of a Moody or a Luther. Great men have been earnest men. Great orators have been moved by their own words and arguments, till they filled their hearers with the fire of enthusiasm. The earnest words of an old Indian chief will better express this thought. Before entering a battle he would call his braves around him, and smiting his brawny hand upon his manly breast, would say: "I know that I shall win this battle: I feel that I shall win this battle; *it is burning in my body, that I shall win this battle!*"

RULE XVII.

Consider your adversary powerful, and be ready for him.

It was a rule of Napoleon never to underrate an enemy. In court trial the enemy is usually, and almost always, stronger than we expect. Hearing one

side, and that imperfectly, and generally well colored, the attorney is often surprised to find he has much to contend with before unknown, and if he has gone to trial weak in law or evidence, he may find too late that his enemy is all powerful and cunning, and he may fight against odds, when he looked for an easy victory. An easy victory in law is not common; usually both sides have some rights. Each party is fortified, or he would have surrendered at discretion. He may come supported by able counsel, he may have practiced until, like David with his sling, he can hit his adversary in an unarmed place. There is only one way to be tolerably sure of winning, and that is to be always ready, always prepared, and always willing to provide the best weapons of warfare.

RULE XVIII.

Suits turn on evidence of facts, with the application of the law.

To make a legal defense, or a lawful demand, the evidence must be within the rules of law and the statute of limitations.

An oral agreement to sell real property or assume the debt of another is of course void, and the first consideration will be, is the demand a legal one? and second, can it be sustained by evidence? It is not only humiliating, but a source of actual loss in business to bring a stale suit and find it barred by the statute, or a good cause and lack evidence. So that before going to court, every case should be tried in the attorney's office; tried with the evidence and

law at hand, and tried with a full knowledge of the facts, but, more than all, in starting a suit, to use the right parties, to bring the right action, is vital to the life of litigation, and no rule of practice should be more carefully heeded than this. *Be sure you are right!* If upon the wrong road, the further you go the more time is lost, and the further you are from the object to be attained. In a certain suit, brought within a few days of "outlawing," the plaintiff neglected an important point in joining the proper defendants, he submitted to a non-suit. This barred the claim, as the adjourned day placed it over six years past due, while the non-suit was as though no proceedings had been commenced. The true temper of the steel depends alike on the degree of heat and the correct time to cool the metal; the law and the facts must be well uni ed to make a judgment possible.

RULE XIX.

Twenty questions of fact to one of law, will arise in court trials.

It is seldom that cases are lost on technicalities, more frequently on defective proof of facts. There are so many means of negligence, so many releases, or receipts and discharges, that lawyers are often defeated by some paper carelessly signed without consulting counsel. In view of these facts suitors should be cautioned early in the case to leave all settlements entirely with their counsel and never settle without advice. There is nothing more annoying to an attorney than an error that takes his case out of court

at the wrong time, without securing the fruits of his labor; and to prevent this he should instruct his client to keep faith with him and reveal all matters in confidence, good or bad, and conceal nothing in the case essential to be known. The more thoroughly the facts are prepared and studied, the more certain will be the result. If a case fails by a law point that no one can see or prevent, counsel should never be blamed for it. But a failure on a point of fact that could be forseen is an act not often forgiven.

RULE XX.

See that you do your work well.

It brings business. To give one rule for increasing business, embodied in two words, I would say: *Be thorough.* A well made deed, abstract or paper, will bring other like work to an office. A well tried case, fully and forcibly put, will bring other suits. "That is the way," said a listener, "that I would like my suit tried if I had one." He is a worker, is a recommend for a lawyer; he makes his client's case his own, is better; *he wins his cases, is still better!* But no one can win cases without work. Great efforts are made after long study. Judge Comstock worked seven weeks in the Tweed case, citing over five hundred authorities, and when he reached the end of his brief, saying to the Court of Appeals, "And from all these cases but one conclusion can be reached, and that is, that every man charged with an offense against the law is entitled by the constitution to a fair and impartial trial by jury, for each offense, to the right of challenge, the right of counsel, and to

be confronted by witnesses in every case, but in this case it was sought to annul these rules, and by conviction on one offense, multiply it by fifty-five, and imprison the respondent beyond the term of his natural life; and having suffered more than one sentence already, we conclude *he has paid the penalty, he has suffered long and patiently*, and should be released and set free!" The court sustained this view, but other suits followed.

RULE XXI.

Hold on hard to the strong points of law and facts.

It is related of Lincoln that he seemed utterly regardless of little points, holding to the core of his case, and winning by his liberality and fairness. In the trial of disputed bills he would waive interest or forego trifles, from time to time, until the close, when he would bend to his work of winning the main issue with a determination seldom witnessed, and having won the jury by good humor, he would fasten their judgment on the sum he demanded. The higher one rises at the bar, the less is known of little, quibbling demands and defenses. In the "upper stories" men battle for principles and property with manly weapons, as will be seen by the efforts of Stanley Matthews, Gen. Butler, Arnold, Hendricks, Carpenter and Judge Chipman, and many others referred to throughout this volume.

If there is one maxim more to be remembered than others, in practice, it is, "BE THOROUGH." Is it a demand to collect? Get it admitted; get it secured; never higgle over trifles; watch the main chance. Is

it a compromise between neighbors? reach a just settlement, and insist upon it. Is it a family difference? end the litigation. Is it the liberty of a man in chains? show him to the jury in his noblest manhood—surround him in court with his friends and neighbors; tell what is good of him; assume not that he is wholly innocent, but that he may *not have been proven guilty.* The sacred calling of a lawyer imposes earnestness of manner, study and ingenuity, tact and energy, and a heart full of love and loyality for right, and with them *every promise should be kept as inviolate as made under a solemn oath.* 'Tis said, "The accusing spirit that flew up to Heaven's chancery with the *first oath,* blushed as he gave it in, and the recording angel, as he wrote it down, dropped a tear upon the word, and blotted it out forever." Why should a brother bind a brother with an oath.

SELECTING A JURY.

TO EXCLUDE *two* jurymen, without cause, in civil suits, and *thirty* in murder cases and high crimes, is a work of more importance than any one act of the trial—not even excepting the argument.

Men are all human. They carry their prejudices to church, to mill and to court, as much as they carry their arms and hands with them. Some are hardened by unbelief in human nature; some are crippled, disordered and impatient; some are lifeless, and with all the milk of human kindness lacking in their nat-

ure; some are noble, generous, humane and open-hearted; some with reason, others are set and determined. Lawyers should prefer reasonable, merciful, enjoyable, liberal, intelligent jurymen, absolutely free from bias or distrust. It is generally known that ex-policemen, ex-sheriffs and ex-justices, with other like ex-officials, have imbibed a deep-seated prejudice for the plaintiffs whom they have served so long; while laboring men prefer their kind, and each nationality will in some degree stand together. So in criminal defenses and civil suits, these points should be always remembered.

But, presuming the justices, policemen, sheriffs and deputies are excluded, and only the honest twelve remain, who of them are to be chosen? Why, look at them! Mark their candor, age, humor, intelligence, social standing, occupation, and let your eyes chose the most friendly, liberal and noble faces —young or old, but better young than old—better warm than cold faces; better builders than salesmen, better farmers than inventors; better good, liberal dealers than all. Avoid doctors, lawyers, pettifoggers. There is a little man, deformed, narrow, selfish, opinionated. Yonder is a captious, caustic, witty man, of stale jokes and street corner arguments, and further on is a *hard* man, grim-faced and cold grey look, white blood and glassy eyes. Rule them all off, if possible. The world has used them ill. They will spread their misery for company's sake. If you have been wise, you have looked ahead, read your directory and known occupation of each. All this is easily done. Jurymen are usually well known men, distinguished for wit, humor, wealth or business

dealings. Chronic hangers-on, unless clear-headed, can easily be excluded.

I have known a sailor on a jury to acquit a sailor charged with crime. He was clear on the case. A wrestler once turned a suit for the plaintiff by showing the jury how it was done; he was *one of them*. In a robbery case, defendant gave evidence to show that he won the money at *draw poker*. A keen juryman, who understood the game, plied complainant with questions, and drew out that he liked poker—went to the defendant's room and played and remarked, "I am beaten at my own game," and although the amount won was over eight hundred dollars in bills, a gold watch, revolver and a twenty-dollar gold piece, the poker-playing juryman convinced the rest that the exciting game, and not the offense charged, was a clear solution of the so-called robbery.

Many a builder or expert has changed the whole twelve by knowing the case. Too much could not be said about the wise selection of jurors.

THE LUCK OF LAW.

To the student at law, and to many men outside of the profession, an *ideal* lawyer is a great orator.

In the days of Webster and Choate, or the earlier ages of history, such a character was worshipped almost as a hero. But learning and the press, the power of print and the greater development of mankind, as a mass, have very much weakened the influence of eloquence.

Within the last dozen years it has become more clearly apparent that evidence, and not eloquence, prevails; and he that has weighed most carefully the history of cases, for the last half century, will bear witness, that more than one case is decided by the overpowering sentiment of communities outside of either eloquence or evidence.

To be a little more explicit, the *science of success* in the department of law is rapidly changing to business principles. An active, energetic, thorough and determined lawyer will succeed in his business very largely in proportion to the capital he employs and the energy he expends in his calling.

The term capital, in law practice, relates as much to character and cultivated judgment of men and things as to any other degree of legal attainment. Indeed, it is the business lawyer, with a common sense view of general subjects, and not the stickler on trifles, that makes his mark in the courts and in the world. He who will trust cases to men, should study the character he confides in.

In the majority of cases twenty times as many questions of fact as of law will arise, and he that is most thorough in facts will be most likely to win. This, then, is the secret of the whole matter. Earnest attention to details, thorough arrangement of evidence, coolness and absence of anger and excitement, brevity and clearness of argument, honesty and fairness of statement, firmness and decision of judgment, a reliance on reason, rather than the biased opinion of your over-zealous client, and deliberate determination to do right.

Eloquence should never be forgotten; there are subjects in themselves eloquent. It is not in words, but in the man, and of the man and from the man, and at the occasion, that eloquence is born. It is never premeditated, but born of the theme and in the counsel. But oratory is studied, mastered and held in readiness for rare occasions.

As nothing should be done to discourage an eloquent appeal, so nothing need be said to imbue attorneys with an over-value of, or reliance upon it to win in a lawsuit. The best advocates and orators are well stocked with apt quotations in prose and verse, and add force to their reasons by happy thoughts of other men, ingeniously interwoven in argument. On great occasions and in great cases, the subject itself may furnish all the eloquence demanded.

In a celebrated case in Indiana, a statesman was pitted against a country attorney, whom all expected to be beaten, if not annihilated. The case proceeded. The country boy was quiet, but clear and determined. He made his modest opening, and waited for the thunder of the orator; but it was like a lion tamed by kind usage; the strength of the statesman lacked a forum for display. He forced his plea upon the jury and they shed tears. He urged his client's cause in all general ways, and just enough to heat his little opponent to a speaking point. The country boy stood up, stammered (purposely, I have since thought) and stumbled a little, but clearing his boat from the shore, he launched off and out smoothly, through the long conflicting proof, picking up every point, commenting on it in the keenest, closest style, building such a fire of the little sticks and floodwood

gathered by the way that by the light of a blazing sun at mid-day, none could see the murderer and his victim plainer than by the boy's description of the tragic scene. The tragedy was recast, the fire and fervor of a boy's warm heart was blazing in every character, speaking from his eyes and hands and face. The jury forgot the statesman, forgot the defense, forgot all but the ghastly deed, held up in such an artful, unerring vivid manner, that a shudder ran round and round the court room, by every new discovery. He sank exhausted, and conviction followed.

It was a flash of lightning from a cloudless sky—but the boy had remembered his case; had dreamed it out, thought it over, studied it, kept his proof like a polished knife, and pushed it to the hearts of the jury unawares. It was another David with his little sling and five smooth stones, striking where no armor had been made.

And this is the luck of law. The *luck is work.;* the luck is tact; the luck is ingenuity; the luck is in bringing law to a court with wisdom, discretion, power and logic, tact and genius, well combined; and bringing facts to a jury in the clearest, plainest, simplest possible light, to convince and decide for your client's cause. It will not do to *guess;* he must work; I repeat it, he *must work to win!*

IN THE SUPREME COURT.

EX-CHIEF JUSTICE GRAVES, of Michigan, writes:

Let every person assuming to be a lawyer consider it his duty to do his best to understand the law, and as a minister of justice to make his office subservient to its rightful administration. It is only through the triumph of justice that the highest professional success can be attained. To conquer in a bad cause may procure temporary applause, but the final verdict of the future will reject the glory of the hour and insist upon truth and justice.

The precept of day by day prudence in the Supreme Court may be comprehended by a few general terms.

We may suppose counsel to have the requisite learning; the next thing is to master the particular case, see that the record is correct; anticipate the arguments on the opposite side and prepare to make the best answer admissible; be true and just to your own intelligence and honor, but do not forget that arguments and views which are not quite forcible to you may appear cogent to the court.

Avoid verbosity, and remember that the members of the court may be supposed to know many things even among the ordinary doctrines of the law.

Use as much brevity as is compatible with clearness, and stop when you get through.

The question of winning cases concerns both sides, and even in the Supreme Court it is a rare thing for both to succeed in the same case, although it is not so very unusual for the event to disclose that both have lost. The difference between attack and de-

fense prescribes a difference between attacking and defending, and one of the first things for counsel is to recognize this destination, and apply its direct and collateral suggestions to the particular case; he will not be inclined by choice to help his adversary, a thing oftener done, by the way, than is commonly imagined, and will therefore see to it that he does not entangle himself with incongruities, but confine himself to the genuine requirements of his own side. Except so far as needful to answer his antagonist's arguments, he will rest his case on a few propositions, generally not to exceed three, and on these he will spend the weight of his fire.

If unable to succeed by such means he would not be likely to do so by expending the same force over a larger ground. If a battery fire concentrated on a single point cannot force a breach, it would not do better certainly if scattered over a hundred yards.

TO BEGIN LAW PRACTICE.

BEGIN law in any state or city with a sense of eternal rectitude: advise every client as you would an own brother. Be in dead earnest about it.

Consider how completely you hold your client's interest in your hands, and how much depends on your honest judgment. Use wise discretion.

The law is not a mere scramble for bread money, for we are charged with the safety of property and the progress of society. Live for some object.

Life is a little journey, where we all hurry and many are injured and impatient, while we are called to set them right under trying conditions. Do so bravely.

The world will measure us by the way we do our duty, as it measures the reaper, the racer, the railway and the telephone. We must do something useful, real, and of benefit, that shall better our race, and by it we shall be known to have lived once and to have made the world better by it.

LAW SUITS LOST AND WON.

A LAW SUIT is lost or won in many ways. It is won by a clear statement to a fair jury, with enough testimony to convince plain men of your theory, which with the evidence to match should be known to counsel in advance of the trial. It is lost by not knowing the enemy's position in season.

Your own client begins the blunder by keeping back part of the facts that will injure him and aid the enemy,—facts that wise counsel could easily explain if advised of earlier. It is often lost by a wrong theory,—one taken to please a client,—when he has no right to dictate more than to suggest facts, and let counsel prescribe remedies.

These overwise clients, that come so near being lawyers and always blunder in their plans, are dangerous advisers! Suits are won very often by the skill of advocates, or tact in the use of evidence. It is a sort of legal workmanship—a sending the shot

to the centre of the target, instead of out among the leaves at random.

The science of good practice is that art which teaches a builder to discard bad timber; to prepare what he uses with precise care, and fitted with precision to the members of the building; that teaches a mason to make joints before reaching the building he is erecting.

The plan in the brain is the science of it all. The skilled architect builds for eternity; the sham tenant house builder uses rubbish in his foundations. Suits are lost by a lack of interest in details, a lack of clearness in evidence, or some want of tact in the conduct of counsel.

TO YOUNG LAWYERS.

A LEADING daily paper answers a young farmer boy who would be a lawyer, and gives him three points by which he may succeed, condensed as follows: "1. Be one who is selected counsel for a corporation. 2. Make a hit in some big criminal case. 3. "No one can dispute but unscrupulous lawyers make the most money." 4. Let one once secure the reputation of knowing how to handle a jury, or "stand in" with the judge, or break a witness all up, and he is certain of a large income."

What a mess of pernicious nonsense! No lawyer ever wrote it! It lacks sense, judgment and decency! It is positively vile—a libel on courts and lawyers, and is basely unjust and unreasonable. Such has not

been even the lowest public estimate for years, to say nothing of a fair opinion. To be a corporation lawyer, says Col. Van Arman, is a dire misfortune to a beginner, for it shelves him forever. He must be the loser in very many cases. He will run in a rut, and soon become a mere money-maker, which is a trade by itself, and a side consideration to men who would rank very high in a profession early in life. A lucky hit in a criminal case and the unscrupulous lawyer come next in order. Lawyers of neither class are to-day leaders of the bar, and this is especially true of the latter. The lucky hit does not come by accident. It is a matter of keen insight, correct theory and careful preparation; the genius of taking pains to go to the place of shooting, to visit the scene of the tragedy, to fill ones self so full of a case that it bubbles out at every pore, with the law at hand and evidence to match the theory. Good evidence is about the best luck any lawyer ever yet heard of. There is no such thing as "handling a jury" for many cases together, without the essentials just mentioned. Juries are convinced by arguments on evidence, and a lawyer who claims to "stand in" with the judge is a rascal that any court will repel as soon as he knows of such an imposter. The best "standing in" is to get the case ready in the law and facts, and be honest about it. And as for breaking up witnesses, the hired girl's remark, "*And what would I be doing all that time?* applies aptly. From fifteen years of reading and saving odd cases, most of them read six times, to make books of, and quite a large number of visits with men of rank in law, like Matthews, Beach, Curtis, Porter, Van Arman,

Dougherty and their class, I have learned to distrust in every sense unscrupulous methods. They bring a bitter sting sooner or later; and of all dangers to young lawyers the risk of trying to break up a witness is most hazardous, for *what will he be doing all that time?* Killing your case by inches; saying hard things; intensifying bad testimony. I could say more, but you are lawyers and can see it easily. The richest and best lawyers have a reputation for skill, honesty and integrity, and often for eloquence. The greatest are upright, honest *men!*

COUNTRY LAWYERS.

A city physician has many advantages by his large circle of acquaintance and social connection over one born in the country, but a city lawyer can never claim such preference. The former will meet a larger practice as the wives and children of the rich in cities more often call a doctor, while the poor make their own medicine. With a lawyer the case is reversed. The rich men of large cities have their counsel hired by the year, and no matter how large their business, no youg man can expect to control it until he has become established, not only as a graduate, but as a faithful and skillful man in special cases. He must either win or be counted a failure in court cases. A poor young lawyer in a city has but one dream of preferment, he must win and win often. The city friend will have his diversions—dances and parties with a thousand and one means of enjoyment. The country lawyer in town will ignore most of them and rely on his court victories for distinction. From the first case to the last he throws his soul into the con-

test, dreams of it, thinks of it, reasons of it when alone, goes to court brim full of it, speaks of it so earnestly, that, like the tongues of dying men, it compels attention by deep harmony. Country lawyers have long been known as industrious. When they move to the city, as did Gordon, Brown, Hendricks and McDonald of Indiana, Van Arman, Swett and Lincoln of Illinois, Beach, Shaffer and Pryor of New York, or Butler of Massachusetts, they carry their courage into court, imbedded and coined in their very being, through a life of early hardship, with one long line of contest, beyond the reach of easy access to many books, they commit all the more thoroughly the principles of common law and evidence, and mass their forces in solid columns. Wealthy lawyers are of all men the most hindred and delayed in starting, by the very reason of their riches. They will spurn the smaller courts and wait for respectable practice, which comes only to such as are ready to do it successfully and never as an experiment, and of all men best drilled in general practice the village lawyers on the inland county seats are the most ready, most apt and most earnest and win their cases the oftenest.

HABIT IN COURT.

THE force of habit is more powerful than law or reason. Once fully formed, it controls the greatest as fully as the humblest, undermining the strongest mental and physical qualities, destroying the purest characters, changing the noblest natures.

I have in mind three instances, one a shrewd, well read ingenious lawyer who gradually drifted into a captious, tricky practice, secured some fame by it, won a few non-suits and demurrers, took in a few ten dollar notes, and failed to win on the merits, until his present practice is but trifling.

Another is of one presumably witty, harsh and sarcastic, abusive if he ever can be, overbearing if it suits his purpose, caring only for self and daily losing the good will of his brother lawyers. He assumes to be successful, but is a positive failure in all that is noble, manly and sincere to his equals or superiors. I think it is clearly the force of habit that is undermining his usefulness.

A third one began by modest charges and respectful bearing toward others; gained in esteem by fairness and kindness; acquired friends even among his opponents; became trusted for his integrity; held the good opinin of the bar and of his clients; was promoted so often that many honors have been declined by him; and now, in ripe age, is turning his eyes towards sunset with a face unmarked by harshness, and will e're long, go over to the majority, mourned and remembered for his goodness as well as greatness. Shall I draw any inference, or am I not clearer without it?

THE REWARD OF VICTORY.

A YOUNG lawyer's beginning is like a racer without a record, like a patent in its model state; he may be useful and *may* prove a failure. Somebody must experiment with him, for he lacks development. If he runs without friction and does the work of experienced counsel, his pay will be less than a tenth of that allowed the senior, and the credit will still belong to another. If he fails—a thing he dare not do, and must consider impossible—it is charged to his lack of tact or genius, when in fact he may even be much brighter at his age than Webster would have been, with like experience and training. But fine lines are not drawn in such cases. He must *win* and that settles it. Neither his rank in college or standing at home will replace the one thing he is hired to do—to win suits. Friends may gather him an audience, smiles and kind faces may welcome his coming, but cheers are out of order in court rooms, and in the supreme moment of a young lawyer's peril, the simple question over all others will be: Is he ready with his evidence? Is he ready in his mind? Is he equal to his case? Has he learned it carefully? Does he know his ground well? Can he win? The reaper that binds best, the racer that runs best, the machinery that works best, the actor that draws best, the doctor that cures best, and the lawyer that wins oftenest, will be paid most liberally. The test is a severe one, an unfair one, and many a boy lawyer has failed under it who should have succeeded, while many a one wins, not by knowing how, but by an Herculean exertion. The courage of victory is a

reward beyond all retainers. The merit of success is the lawyer's best paymaster; like the Roman soldiers who had been victors in battle, their eyes and their arms proclaimed it. So the sequel to victory is *success* in anything.

LAWYER'S FEES.

It is said that several New York lawyers, like Curtis, Conkling, Evarts, Pryor, and their class, could very easily accept silent retainers by the month or year, and remain away from court contests entirely, while they enjoyed a princely income, but prefer the excitement of advocacy to the duller work of mere money making.

It is well known in cities that the highest chargers in law practice are not the best lawyers but often men whom others engage for some special gift or influence—generally the knack of gaining an early victory. The hardest workers and most conscientious men in practice are more of the Edmunds, Thurman and McDonald stripe, who have no time to make money, and satisfy their conscience with smaller charges—either of these men could easily grow rich by higher charging.

More than likely the average lawyer can recall many men in practice whose gift in gaining cases was far superior to that of saving silver.—Webster and Choate, Carpenter and Beaeh, Storrs and Lincoln were all poor, or not rich advocates, and yet with talent of the highest order, while hundreds of

others, inferior in genius, learning or character, have lived in luxury and died in splendor (if owning money is splendor) from some strange gift of grasping riches.

To sum it up briefly there is but one conclusion to the whole matter, and that is: the little lawyer, within the larger one, prompts the other into making low or high charges, and in proportion as the little inside man (sometimes called the soul) is large and influential with the outer counsel, will be the measure of the fees demanded. The great and generous, the strong and noble can afford to be reasonable—to them victory is recompense, and an honorable victory is a rich reward, while the narrow and selfish must have money or they lose all enjoyment in law practice. Lawyers like others weigh with strange balances.

A VEST POCKET BRIEF.

MONDAY.—The past year was one of progress but it might have been better. Yes, there was a suit nearly lost for lack of a little clearer evidence. We will see that does not happen this year.

Tuesday.—A juror mentioned it and of all men to learn practice of a juryman is one of the best and safest. We will keep a sharper eye on absolute clearness of evidence—that which seemed clear to our client was vague to the jury. It is not an easy task to convince twelve men on either side of any case.

Wednesday.—The brother that interrupted an argument and got a stinging reply, will remember it and pay it back some day; even we will not forget it; an injury resented leaves a sting to heal slowly; it may take years in curing, while the satisfaction lasted but a moment. It will be better to omit that practice this year.

Thursday.—The man with a "genious for blundering" as one termed it, well, what if he had? he was young and impulsive; it would have been nicer not to have noticed it; the poor fellow will carry that sentence to the court of memory, and hold it like an appeal case in chancery, and decide it against us often when alone. Nothing of that sort shall happen again; the year must run with less friction.

Friday.—A half dozen clients called at busy hours and went away early. They made their cases very plausible, for their side, and omitted all mention of their adversaries' position—by ignoring this evidence we were taken by surprise and nearly lost the contest. We will study the other side this year. The *other* side is the one that is not so easy to win over.

Saturday.—What is this law business anyway? but an endless quarrel for somebody! The more some quarrel, the more they like it. The best way to hush up a personal contest gracefully is, to make the angry one pay for it at the time—to fix the fees liberally at the earliest beginnining. They like lawyers best then; we will try it this year as an experiment.

Sunday.—The best rule for the year, in a nutshell, is this: select cases with an eye to certainty; prepare them with a view to clearness; end them at a point

of the least loss to client and the most margin to counsel, always believing that a certain fifty is better than a doubtful hundred, while the gain of money by the loss of friendship is a poor investment.

THE BEST LAWYERS.

I HAVE noticed various items of interest in recent exchanges on this theme, but in none is the theory carried out to a complete conclusion. It is a common thing to speak of a lawyer as "a first class lawyer" or "a rising young lawyer" or "a third rate lawyer" —the last title is given by the fellow who has just been defeated in court by the "third rate" advocate. Some have the habit of thinking that only lawyers in large cities, like New York, Philadelphia or Chicago get their full growth and become great lawyers; some assume that advocates can not of course be learned in the law.

A close reading of history will kill off most of these theories and change one's convictions materially. A lawyer may be entirely first class *of his age* and nature of his business, and age with experience should always enter into the estimate; many a man has never been tested—never been tried. But for some singular cases Patrick Henry may have remained without a record, and Abraham Lincoln have died without a bright name as an advocate; neither enjoyed a city practice, and men like Beach, Shaffer, Porter, Vorhees, Waite, Carpenter and Hendricks all attained fame in reality while country lawyers. They were not born in, but CALLED to city life,

Some of the best lawyers never reach fame till after death—Ryan was one of this class, an unknown man of Wisconsin with a Websterian genius who *knew the law* and how to handle it.

But as was recently said in the "Daily Register," "to know the law is not enough to make a great lawyer." He must apply it, win by it, bring out results and enforce attention, as did Seward and Webster, Choate and Tom Marshall. Great lawyers are great in genius, and to underrate them when merely advocates is the grossest blunder. What is an advocate, but one who can urge his position as did Cicero in the defense of Gavius? Like Graham at the trial of McFarland, Brady in the trial of Sickles, McSweeney in the Gov. Scott case, Curtis in defense of Buford, Crittenden in the Ward trial, and Vorhees pleading for Mary Harris. These are a handful of the advocates who have moved their states and moulded public opinion in trials not by dry law alone—for that is mechanical, that is book-keeping, that is abstract of title work, that is something that money will buy and pay for it—but genius, sagacity, power, influence, character, eloquence and manhood are gifts of greatness inherited from the Almighty and developed by ripe experience. *Great lawyers must be good advocates.* Good lawyers may be such and not be advocates, but leaders of men and moulders of minds must be more than title searchers, precedent finders or statute interpreter—they must be men like Webster and Gladstone, who seek out the right and lead other men to believe it and follow it and *create* laws and govern nations—great lawyers are greater than law itself.

I WILL.

A QUESTION that troubles young lawyers is where to locate and what branch of practice to select. This puzzle lasts even into middle life with many able men, and some never solve it—life itself is an unsolved riddle.

Letters from Dakota, Oregon, Iowa, Georgia and Arkansas indicate a fast growing settlement in each locality, and where growth is rapid, young lawyers secure more chances of promotion; while in Eastern and Middle states habits are fixed, titles are established, and older men do the leading business.

But there is a place for every one of genius and ability somewhere, and only let him say *I will reach it* and he is half to it already. Men live where their hopes are and prosper when they *will* prosper. Men invent when they have courage to think out problems alone and advance them. The man who surrenders to a theory like this: I'm only a little moth around the candle of the earth, burning my wings with each flutter, and doomed to fall unknown and early into an unforgotten hereafter, is very likely to do so—he is half way on the journey.

Men who have within them the *I will be a lawyer, and a good one*, the *I will live happily, battle bravely*, the *I will succeed* INWARDLY, must make a bright mark some day, for such lives are never failures; they are heard of, marked, remembered. "Make up your mind to have a front seat in life, and you attract to you the powers that carry you to it."

Confidence in yourself, the I will is everything. Look at the leaders of great enterprises! They seem

to care little for competition; most of them are sharpened by it. They aspire to be first and the first is ever just ahead of them. They have already half reached it when once fairly started. *Think* to the front and you will get to the front; lag to the rear and it is ever ready for your coming.

Get out of the notion that the man who cites the most law and reads the most reports, is the best lawyer. No man carried less books to court than did Carpenter, but he carried his manhood there, always; his clear insight was thought out by himself, and his facts applied to principles and results demanded. It is not the most learning but the best wisdom that wins. What a weak ambition one must have to spend a life time in dreaming over the prospects of personal failure! Why not anticipate success and aim for it? The courage of the *I will lawyer* secures him first standing room, next an opening, and early a front seat in the ranks of his profession.

If you never have set your heel down with emphasis, in an I will determination to win, the sooner this resolution is reached the nearer you will be the goal of your ambition. The hand is never stronger than the heart, and the man is never greater than his mind. His life is below or above his true condition, very much as he wills it, and no one will cheer him till he wins something worthy of applause. The world is both stingy and liberal, reluctant to risk on uncertainty and willing to advance thousands on ventures when successful. The demonstration of success is what men wait for and demand.

CONCLUSION.

1. Look at the profit side of the ledger; money is handy in law business.

2. Rely on a personal study of cases; a few, well sorted, are better than many of remote bearing.

3. Bring less suits and settle more, even by splitting differences; but *charge for it.*

4. Counsel less with clients and more with witnesses; the bias of the one overreaches; the timidity of the other falls short of truth.

5. Cross-examine less with honest witnesses; they tell too much and misplace it so recklessly.

6. Claim not too much perfection in clients; the jury know human nature is ugly; they will be jealous of *half angels* in lawsuits.

7. Demand less and be believed, rather than claim too much and let the jury halve it; they may give the big half to your adversary.

8. Use others as you hope to be used by them; the chances of gain and loss are in favor of the gain side by this method, and a good name will be a fortune made easy.

9. Carry your heart into court—in everything; do nothing heedlessly; juries are more and more in sympathy with fair play every year, and no theory will stand testing like honesty.

10. Don't forget the boy lawyers, struggling up the steep hill from college to Webster's top story. It's a long way up now. It is better to cheer than to discourage. Cheer them, and they will brighten your name hereafter.

J. M. Donovan